9/217

Nancy C. Smith F/D* GOVT 32

5180 Eastern Avenue, N.E., #304 20011

Dept. of Education

bright, married, grown B

juror #1

Digitized by the Internet Archive
in 2025 with funding from
Digitization funded by a generous grant from the National Endowment for the Humanities.

https://archive.org/details/box55_submission

42/183

Ronald R. Pollard GOVT 21

3738 9th Street, N.W. 20010

Elev. Oper., NIH

alt #5

Mom's boyfriend's best man's son's mom

"...was sorta ticked at me about it"

not well done but well meant

Young, will be ok - don't strike

722-9022

NIH 496-4000 2417

725-0181

0181

[723-0981 or 723-0181]

26/123

Freddie L. King m/D* GOVT 44

2251 12th Place, N.W. 20009

Bus Driver

alt # 1

17/146

Willbur R. McCoy, Jr. M/D 35

5413 Kansas Avenue, N.W. 20011

U.S. Post Office

juror # 4

16/90

Bill E. Hargrow M/D* GOVT 53

5008 7th Place, N.W. 20011

Custodian

juror # 3

Son in law dowy Time for dept
thought it was fair
upper middle class
blue suit + glasses.
no opinion

27/158

Walter H. Morton M/P 38

3529 Ames Street, N.E., #104 20019

Postal Clerk

alt #2

knows Turner, cop

10/177

Doris M. Pearson F/D* GOVT 52

333 34th Street, N.E. 20019

Cafe Manager

juror # 7

34/180

Andrew H. Peters 65

6036 Eastern Avenue, N.E. 20011

U.S. Postal Service

alt #3

45/ 198

Rosa M. Robinson F/D* 44

4773 S. Capitol Terr., S.W. 20032

Key Entry Oper.

alt #6

36/182
Rt

Bunita M. Pipkin F/D* 62

1111 P Street, N.W. 20005

Housekeeper

alt #4

Older woman w/sick sister,
red suit
Probably goes to church
Sister out of town
possible strike

Bernice W. Coleman F/D* 64

3861 Halley Terrace 20032

Retired

juror #6

Phillips - Mimi
Phillips
234-7204

43
22-23-24-SIP

Ron Young NMC.

Phila AFSC

1029 Vermont

FBI

Brennan
Moore
Jones
Grimaldi
Pengilly

DC

Wilson
Herlihy
Acree
Soter
Scrapper
Sagen
Mahaney
Kolso Madsovich
D.C. Comp.

Byrnes

Policyholder Identification

WAUSAU UNDERWRITERS
INSURANCE COMPANY

01-2MC-6752-8202 08-11-81

PILSBURY, ANNE
17 DANFORTH ST
NORWAY, ME

67 VW 1178 35780

FOR QUESTIONS OR CHANGES CALL: (FOR CLAIMS SEE BACK)
800 325-3684 TOLL FREE
IN MO. 314 878-1800 COLLECT

TO REPORT A CLAIM	**800-325-4960 TOLL FREE** (In Missouri 314-878-1800 Collect)	From Anywhere In The U S 24 Hours A Day
FOR ALL OTHER MATTERS	**SEE INSTRUCTIONS ON FRONT OF CARD**	

IN EVENT OF AN ACCIDENT. . . . . . .

- WRITE DOWN NAMES AND ADDRESSES OF PERSONS INVOLVED AND WITNESSES GET VEHICLE LICENSE PLATE NUMBERS
- NOTIFY POLICE IMMEDIATELY IF ANYONE IS INJURED CALL A HOSPITAL OR A DOCTOR.
- **IMPORTANT**--MAKE NO STATEMENT REGARDING THE ACCIDENT TO ANYONE EXCEPT POLICE OR AN AUTHORIZED REPRESENTATIVE OF YOUR INSURANCE COMPANY DO **NOT** ADMIT LIABILITY
- IF ACCIDENT INVOLVES BODILY INJURY, OR IF YOU HIT OTHER CAR IN REAR, CALL THE ABOVE CLAIM NUMBER AT ONCE IN LESS SERIOUS CASES CALL AS SOON AS CONVENIENT

SIGNATURE _____

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al., Plaintiffs, v. JERRY WILSON, et al., Defendants.	)	RECEIVED JAN 5 1982 Civil Action 76-1326

MOTION BY DEFENDANTS BRENNAN, MOORE, JONES, PANGBURN, AND GRIMALDI FOR STAY OF EXECUTION OF JUDGMENT

Defendants Charles D. Brennan, George C. Moore, Courtland J. Jones, Gerould W. Pangburn, and Gerald T. Grimaldi, through undersigned counsel and pursuant to Rule 62(b) of the Federal Rules of Civil Procedure, move this Honorable Court for stay of execution of, or stay of any proceedings to enforce, the judgment entered in favor of plaintiffs on December 23, 1981, pending disposition of defendants' motion for judgment notwithstanding the verdict or, in the alternative, for new trial.

In support of this motion the defendants rely upon the attached memorandum of points and authorities.

Respectfully, submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F.C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

David H. White
DAVID H. WHITE

Attorneys, Department of
Justice, Civil Division
10th & Penn. Ave. N.W.
Washington, D.C. 20530
Tel: (202) 633-4269

Attorneys for federal
defendants.

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action
	)	76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF MOTION BY DEFENDANTS BRENNAN, MOORE, JONES, PANGBURN, AND GRIMALDI FOR STAY OF EXECUTION OF JUDGMENT

Following trial of this action, the jury returned a verdict in favor of plaintiffs and against the federal defendants in an amount totaling $262,500. Judgment was entered on December 23, 1981.

On January 4, 1982, the federal defendants moved pursuant to Rule 50(b), Federal Rules of Civil Procedure for judgment notwithstanding the verdict or, in the alternative, for a new trial. Having so moved, the federal defendants request that the Court stay execution of, and stay any proceedings to enforce, the judgment in this action pending disposition of the pending motions.

The federal defendants also request that the Court not require a bond at this time. In support of this request defendants state that defendants Brennan, Jones, Moore, and Grimaldi are retired from the Federal Bureau of Investigation and reside and own property in Virginia. Defendant Pangburn is currently the Assistant Special Agent in Charge of the counterintelligence division of the FBI's New York Office and resides in New Jersey. Thus, all defendants are stable and reputable men. In addition, as shown in the motion to set aside the judgment, the verdict is grossly excessive and to require a bond based on that verdict would be inappropriate. Moreover, the verdicts are so large that even a 10% bond would require a substantial, and possibly personally disruptive, outlay of

resources. Until such time as the pending motions are decided, which may well result in a substantial reduction if not a complete setting aside of the verdict, the Court should exercise its discretionary authority to grant a stay without requiring a bond. See Federal Prescription Service, Inc. v. American Pharmaceutical Association, 636 F.2d 755 (D.C. Cir. 1980).[1/]

CONCLUSION

For the foregoing reasons, federal defendants' motion for a stay should be granted.

Respectfully, submitted,

J. PAUL McGRATH
Assistant Attorney General

CHARLES F.C. RUFF
United States Attorney

Brook Hedge
BROOK HEDGE

David H. White
DAVID H. WHITE

Attorneys, Department of
Justice, Civil Division
10th & Penn. Ave. N.W.
Washington, D.C. 20530
Tel: (202) 633-4269

Attorneys for federal
defendants.

1/ Legislation is pending before Congress, S. 1775 and H.R. 24, which would amend the Federal Tort Claim Act to permit the United States to intervene in cases such as this. If this legislation is enacted, the United States would intervene as a party defendant and no bond would be required.

RECEIVED JAN 2 0 1982

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.	:	
Plaintiffs	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

OPPOSITION OF DISTRICT OF COLUMBIA DEFENDANTS TO PLAINTIFFS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICTS OF PLAINTIFF WASHINGTON AREA WOMEN STRIKE FOR PEACE AND DEFENDANT ANN

Preliminary Statement

On December 23, 1981, the jury returned a verdict against plaintiff Washington Area Women Strike for Peace and in favor of defendant Ann Kolego-Markovich. 1/ Thereafter on January 1, 1982, the District of Columbia defendants filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial or, in the alternative for a remittitur. On January 6, 1982, plaintiffs filed a motion for judgment notwithstanding the verdicts rendered against plaintiff Washington Area Women Strike for Peace and in favor of defendant Ann Kolego-Markovich.

The District of Columbia defendants oppose plaintiffs' motion for judgment notwithstanding the verdict returned against plaintiff Washington Area Women Strike for Peace and defendant Ann Kolego-Markovich and incorporate herein

1/ The jury also returned a verdict in favor of defendant Harold Bynum; however, the verdict in favor of defendant Bynum is not included in plaintiffs' motion for judgment notwithstanding the verdict.

the memorandum of points and authorities accompanying defendants' motion for judgment notwithstanding the verdict.

Argument

I.

There was, as a matter of law, no evidence that particular District defendants violated any rights of plaintiff Washington Area Women Strike for Peace or proximately caused this plaintiff any compensable injury.

The standard that should be applied by this Court in ruling on plaintiffs' motion for judgment notwithstanding the verdict returned against plaintiff Washington Area Women Strike For Peace has been set forth in the case of

1978) as follows:

> "A motion for judgment notwithstanding the verdict should not be granted unless the evidence, together with all inferences that can be reasonably drawn therefrom is so one-sided that reasonable men could not disagree on the verdict."

There was, in fact, no evidence that particular District defendants violated any rights of Washington Area Women Strike for Peace or proximately caused that plaintiff any compensable injury. Ms. Barbara Bick testified on behalf of plaintiff Washington Area Women Strike for Peace. Ms. Bick testified that she had been active in this plaintiff organization since 1968 and had participated in many anti-war demonstrations held in Washington. She further testified that she had no knowledge of any activity on the part of the Metropolitan Police Department, or its agents which was directed toward this plaintiff organization. The major part of Ms. Bick's testimony concerned the F.B.I. documents which indicated only that F.B.I. agents had attended meetings of the plaintiff organization. There was no evidence, documentary or otherwise, that Metropolitan Police Officers even attended these meetings. Ms. Dagmar Wilson also testified on behalf of this plaintiff organization

Her testimony revealed that she also had no knowledge of any Metropolitan Police Department involvement in the activities of Washington Area Women Strike for Peace; or for that matter, no knowledge of any injuries caused to this organization by the federal defendants.

The jury returned a verdict against plaintiff Washington Area Women Strike for Peace. This verdict is certainly supported by the weight of the evidence presented at trial, since there was no evidence at all that the District defendants harmed this plaintiff organization in any way.

Moreover, there was no evidence to support plaintiffs' Peace was injured by the same acts which injured plaintiff Washington Peace Center. But, even if such evidence did exist, it would establish only that the jury returned inconsistent verdicts, and thereby, entitle defendants to a new trial.

In sum, the verdict returned against plaintiff Washington Area Women Strike for Peace was supported by the evidence presented at trial, and plaintiffs are not entitled to a judgment notwithstanding the verdict as to this plaintiff.

There was insufficient evi... establish that defendant Ann Kolego-Markovich violated any rights of plaintiffs or proximately caused plaintiffs any compenable injury.

Plaintiffs contend that the following grounds establish a basis for setting aside the verdict rendered in favor of defendant Ann Kolego-Markovich: (1) uncontroverted evidence established that claims against defendant Arn "Crazie Annie" Kolego-Markovich were not barred by the statute of limitations, and; (2) that no claim of good faith immunity is available to her.

(a) Plaintiffs' claims are barred by the applicable Statute of Limitations

Plaintiffs contend that they did not determine the ...defendant Kolego-Markovich until sometime around September 26 ... 5, 1973. However, ... burden ide... plaintiffs have offered no evidence to su... of affirmatively proving that defendant Kolego-Markovich, or any other District of Columbia defendant fraudulently or deliberately concealed any facts from them. See Fitzgerald v. Seamans, 384 F. Supp. 688 (D.D.C. 1974), affirmed, 553 F.2d 220 (D.C.Cir., 1977). Additionally plaintiffs failed to prove that defendant Kolego-Markovich, or any other District of Columbia defendant had an affirmative duty to disclose this information tothem, and failed to do so, or that defendant Kolego-Markovich took some affirmative action to conceal material facts from the plaintiffs. Mere silence on the part of defendant Kolego-Markovich does not, in and of itself, constitute a finding of fraudulent concealment. See Smith v. Nixon, 606 F.2d 1183 (D.C. Cir. 1979); General Aircraft Corp. v. Air America, Inc. 482 F. Supp. 3, 8 (D.D.C. 1979).

Finally, plaintiffs have failed to prove that they exercised "due diligence" in attending to their own affairs and seeking out the facts and appropriate legal advice in order to ascertain whether they had a viable legal action prior to 1976. Fitzgerald v. Seamans, supra.

Therefore, merely because plaintiff Richard Pollack testified that he first learned of defendant Kolego-Markovich's true identity in 1973 would not be enough to toll the running of the statute. Thus plaintiffs have failed to provide any basis for over turning the jury's determination that the statute of limitations barred their

the District defendants' own JNOV motion, the plaintiffs' failure to proof regarding the factors necessary to toll the running of the statute of limitations, requires dismissal to all District defendants.

(b) Defendant Ann Kolego-Markovich enjoys qualified immunity defense.

No evidence was introduced at trial to overcome the qualified immunity defense asserted by defendant Kolego-Markovich or any other District of Columbia defendant. To establish a successful claim of qualified immunity defendant Kolego-Markovich need only prove that at the time of her alleged conduct that she had a reasonable good faith belief that her conduct was lawful. Procunier v. Navarette, 434 U.S. 555 (1973); Pierson v. Ray, 386 U.S. 547 (1967). Even if her conduct is found to be unlawful, qualified immunity, if established, constitutes a complete defense. Pierson, supra, at page 357.

Plaintiffs contend that defendant Kolego-Markovich should not be immune from liability because their evidence showed that she had been observed at a demonstration throwing

a tear gas cannister and that she had suggested that demonstrators illegally enter the Pentagon and White House ground. Both these allegations were refuted by defendant Kolego-Markovich when she wook the stand, leaving the jury to decide which testimony to credit.

The jury credited the testimony of defendant Kolego-Markovich and returned a verdict in her favor with respect to all of plaintiffs claims. Therefore, plaintiffs have failed to establish any grounds for having the verdict returned by the jury set aside.

Conclusion

Based on the foregoing, the District of Columbia defendants respectfully request that this Court deny plaintiffs' motion for judgment nowithstanding the verdicts of plaintiff Washington Area Women Strike For Peace and defendant Ann Kolego-Markovich.

Judith W. Rogers (mw)
JUDITH W. ROGERS
Corporation Counsel, D.C.

John H. Suda (mw)
JOHN H. SUDA
Deputy Corporation Counsel, D.C.

Laura W. Bonn
LAURA W. BONN
Assistant Corporation Counsel, D.C.

George N. Barclay /mw
GEORGE N. BARCLAY
Assistant Corporation Counsel, D.C.
Attorneys for District of Columbia
Defendants
District Building
Washington, D.C. 20004

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Opposition of District of Columbia Defendants to Plaintiff' Motion for Judgment Notwithstanding the Verdicts of Plaintiff Washington Area Women Strike For Peace and Defendant Ann Kolego-Markovich and order, was mailed, postage prepaid, to Daniel M. Schember, Esquire, Attorney for Plaintiffs, 1712 N Street, N.W., Washington, D.C. 20036; and David White, Esquire, Attorney for Federal Defendants, Department of Justice, Washington, D.C. 20530, this 18th day of January, 1982.

Laura W. Power

Assistant Corporation Counsel, D.C.
Attorney for District of Columbia
Defendants
District Building, Room 324
Washington, D.C. 20004
727-6348

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.	:	
Plaintiffs	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

ORDER

Upon consideration of plaintiffs' motion for judgment notwithstanding the verdict, concerning plaintiff Washington Area Women Strike for Peace and defendant Ann Kolego-Markovich, the memorandum of points and authorities filed in support thereof, the opposition filed by the District of Columbia defendants thereto, and the entire record herein, it is, by the Court, this____day of_____, 1982, be, and the same are, hereby denied.

_____
JUDGE

RECEIVED JAN 2 0 1982

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.	:	
Plaintiffs	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

MOTION OF DISTRICT OF COLUMBIA DEFENDANTS FOR AN EXTENSION OF TIME WITHIN WHICH TO RESPOND TO PLAINTIFFS' MOTION FOR ATTORNEYS FEES AND COSTS

Pursuant to Rule 6(b), Federal Rule of Civil Procedure, the District of Columbia defendants respectfully move this Court to extend the time in which they may respond to plaintiffs' motion for attorneys fees and costs under 42 U.S.C. §1988, until ten days after this Court rules on defendants' pending motion for judgment notwithstanding the verdict, on grounds that the plaintiffs' motion for attorneys fees is premature and not ripe for briefing or disposition.

Judith W. Rogers /lmb
JUDITH W. ROGERS
Corporation Counsel, D.C.

John H. Suda /lmb
JOHN H. SUDA
Deputy Corporation Counsel, D.C.

Laura W. Bonn
LAURA W. BONN
Assistant Corporation Counsel, D.C.
Attorney for Defendants District of Columbia
District Building
Washington, D.C. 20004
727-6348

George N. Barclay /lmb
GEORGE N. BARCLAY
Assistant Corporation Counsel, D.C.
Attorneys for District of Columbia Defendants
District Building
Washington, D.C. 20004

CERTIFICATE OF SERVICE

I hereby ceritfy that a copy of the foregoing Motion of District of Columbia Defendants For An Extension of Time Within Which To Respond to Plaintiffs'Motion for Attorneys Fees and Costs, together with Memorandum of Points and Authorities in Support thereof and Order was mailed, postage prepaid, to Daniel M. Schember, Esq., Attorney for Plaintiffs, 1712 N Street, N.W., Washington, D.C. 20036; and David White, Esq., Attorney for Federal Defendants, Department of Justice, Washington, D.C. 20530, this 18th day of January, 1982.

Laura W. Bonner
Assistant Corporation Counsel, D.C.
Attorney for District of Columbia
Defendants
District Building
Washington, D.C. 20004
727-6348

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.	:	
Plaintiffs	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION OF THE DISTRICT OF COLUMBIA DEFENDANTS FOR AN EXTENSION OF TIME WITHIN WHICH TO RESPOND TO PLAINTIFFS' MOTION FOR ATTORNEYS FEES AND COSTS

42 U.S.C. §1988 provides, in relevant part:

> "In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title IX of Public Law 92-318, or title VI of the Civil Rights Act of 1964, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. (Emphasis provided.)

Clearly, in deciding motion for attorneys fees filed under 42 U.S.C. &1988, a threshold determination must be made as to who is "the prevailing party" in the litigation. Therefore, in view of the fact that the District of Columbia defendants have filed a motion for judgment notwithstanding the verdict or, in the alternative, for a new trial or, in the alternative for a remittitur, and plaintiffs have filed a motion for judgment notwithstanding the verdict, the question of whether the plaintiffs or District of Columbia defendants are the "prevailing party" is still before the Court to be determined.

Therefore, plaintiffs'motion for attorneys fees and costs is premature pending the outcome of the post-trial motions and the District of Columbia defendants request that this time be extended until the Court has ruled on these motions.

JUDITH W. ROGERS
Corporation Counsel, D.C.

JOHN H. SUDA
Deputy Corporation Counsel, D.C.

Laura W. Bonn

LAURA W. BONN
Assistant Corporation Counsel, D.C.
Attorneys for District of Columbia
Defendants
District Building
Washington, D.C. 20004
727-6348

George N. Barclay /sub

GEORGE N. BARCLAY
Assistant Corporation Counsel, D.C.
Attorneys for District of Columbia
Defendants
District Building
Washington, D.C. 20004

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.	:	
Plaintiffs	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

ORDER

This matter is before the Court on the motion of the District of Columbia Defendants for an extension of time within which to respond to plaintiffs' motion for attorneys fees and costs. Upon consideration of the motion, the points and authorities filed in support thereof, and the entire record herein, it is, by the Court, this____day of January, 1982,

ORDERED: That the motion of the District of Columbia defendants for an extension of time within which to respond to plaintiffs' motion for attorneys fees and costs, and the same is, hereby granted,

FURTHER ORDERED: That the District of Columbia defendants have up to 10 days after the Court rules on defendants' pending motion for judgment notwithstanding the verdict within which to file a response to plaintiffs' motion for attorneys fees and costs.

JUDGE

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. _____

(General instruction on good faith or qualified immunity defense: scope and nature of official's responsibilities)

Under certain circumstances government officials are shielded from liability for otherwise unlawful acts on the ground that they acted in good faith and with a sincere and reasonable belief that their actions were lawful. Not all officials, however, are entitled to such protection.

The defendants here claim that they are. Before determining whether they acted in good faith and with a sincere and reasonable belief that their actions were lawful, you must decide whether or not the jobs held by these defendants were of the type that entitles them to rely on such defense.

The defense is available only to those officials who in the performance of their duties are required to exercise their discretion, make decisions involving the weighing of many factors and consistently have to make such decisions under circumstances requiring prompt action, and who engage in the formulation of long-term policy.

If you find that any of the defendants here were not required to perform such tasks in conjunction with their jobs, you are instructed that the defense of good faith or qualified immunity cannot be invoked by that defendant and you must then, as to each such defendant, determine only whether that defendant committed any act in violation of a plaintiff's constitutional or other rights.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Scheuer v. Rhodes, 416 U.S. 232 (1974); Barr v. Mateo, 360 U.S. 564 (1959).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. _____

(General instruction on good faith or qualified immunity defense: scope and nature of official's responsibilities)

Under certain circumstances government officials are shielded from liability for otherwise unlawful acts on the ground that they acted in good faith and with a sincere and reasonable belief that their actions were lawful. Not all officials, however, are entitled to such protection.

The defendants here claim that they are. Before determining whether they acted in good faith and with a sincere and reasonable belief that their actions were lawful, you must decide whether or not the jobs held by these defendants were of the type that entitles them to rely on such defense.

The defense is available only to those officials who in the performance of their duties are required to exercise their discretion, make decisions involving the weighing of many factors and consistently have to make such decisions under circumstances requiring prompt action, and who engage in the formulation of long-term policy.

If you find that any of the defendants here were not required to perform such tasks in conjunction with their jobs, you are instructed that the defense of good faith or qualified immunity cannot be invoked by that defendant and you must then, as to each such defendant, determine only whether that defendant committed any act in violation of a plaintiff's constitutional or other rights.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Scheuer v. Rhodes, 416 U.S. 232 (1974); Barr v. Mateo, 360 U.S. 564 (1959).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. _____

(General instruction on good faith or qualified immunity defense: scope and nature of official's responsibilities)

Under certain circumstances government officials are shielded from liability for otherwise unlawful acts on the ground that they acted in good faith and with a sincere and reasonable belief that their actions were lawful. Not all officials, however, are entitled to such protection.

The defendants here claim that they are. Before determining whether they acted in good faith and with a sincere and reasonable belief that their actions were lawful, you must decide whether or not the jobs held by these defendants were of the type that entitles them to rely on such defense.

The defense is available only to those officials who in the performance of their duties are required to exercise their discretion, make decisions involving the weighing of many factors and consistently have to make such decisions under circumstances requiring prompt action, and who engage in the formulation of long-term policy.

If you find that any of the defendants here were not required to perform such tasks in conjunction with their jobs, you are instructed that the defense of good faith or qualified immunity cannot be invoked by that defendant and you must then, as to each such defendant, determine only whether that defendant committed any act in violation of a plaintiff's constitutional or other rights.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Scheuer v. Rhodes, 416 U.S. 232 (1974); Barr v. Mateo, 360 U.S. 564 (1959).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. _____

(General instruction on good faith or qualified immunity defense: scope and nature of official's responsibilities)

Under certain circumstances government officials are shielded from liability for otherwise unlawful acts on the ground that they acted in good faith and with a sincere and reasonable belief that their actions were lawful. Not all officials, however, are entitled to such protection.

The defendants here claim that they are. Before determining whether they acted in good faith and with a sincere and reasonable belief that their actions were lawful, you must decide whether or not the jobs held by these defendants were of the type that entitles them to rely on such defense.

The defense is available only to those officials who in the performance of their duties are required to exercise their discretion, make decisions involving the weighing of many factors and consistently have to make such decisions under circumstances requiring prompt action, and who engage in the formulation of long-term policy.

If you find that any of the defendants here were not required to perform such tasks in conjunction with their jobs, you are instructed that the defense of good faith or qualified immunity cannot be invoked by that defendant and you must then, as to each such defendant, determine only whether that defendant committed any act in violation of a plaintiff's constitutional or other rights.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Scheuer v. Rhodes, 416 U.S. 232 (1974); Barr v. Mateo, 360 U.S. 564 (1959).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. _____

(General instruction on good faith or qualified immunity defense: scope and nature of official's responsibilities)

Under certain circumstances government officials are shielded from liability for otherwise unlawful acts on the ground that they acted in good faith and with a sincere and reasonable belief that their actions were lawful. Not all officials, however, are entitled to such protection.

The defendants here claim that they are. Before determining whether they acted in good faith and with a sincere and reasonable belief that their actions were lawful, you must decide whether or not the jobs held by these defendants were of the type that entitles them to rely on such defense.

The defense is available only to those officials who in the performance of their duties are required to exercise their discretion, make decisions involving the weighing of many factors and consistently have to make such decisions under circumstances requiring prompt action, and who engage in the formulation of long-term policy.

If you find that any of the defendants here were not required to perform such tasks in conjunction with their jobs, you are instructed that the defense of good faith or qualified immunity cannot be invoked by that defendant and you must then, as to each such defendant, determine only whether that defendant committed any act in violation of a plaintiff's constitutional or other rights.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Scheuer v. Rhodes, 416 U.S. 232 (1974); Barr v. Mateo, 360 U.S. 564 (1959).

Richard Pollock

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,
Plaintiffs,

v. : Civil Action No. 76-1326

JERRY WILSON, et al.,
Defendants.

FILED
DEC 23 1981
JAMES F. DAVEY, CLERK

SPECIAL VERDICT FORM

1. Did any of the following defendants injure plaintiff Richard Pollock in the exercise of that plaintiff's First Amendment rights or participate in one or more conspiracies that so injured plaintiff Richard Pollock?

	Name of Defendant	By claimed Individual Action		By claimed F.B.I. Conspiracy		By claimed M.P.D. Conspiracy		By claimed Joint Conspiracy	
		Yes	No	Yes	No	Yes	No	Yes	No
FBI	Brennan	Yes		Yes				Yes	
FBI	Moore	Yes		Yes				Yes	
FBI	Jones	Yes		Yes				Yes	
FBI	Grimaldi	Yes		Yes				Yes	
FBI	Pangburn	Yes		Yes				Yes	
D.C.	Wilson	Yes				Yes		Yes	
D.C.	Herlihy	Yes				Yes		Yes	
D.C.	Acree	Yes				Yes		Yes	
D.C.	Bynum		No				No		No
D.C.	Scrapper	Yes				Yes		Yes	
D.C.	Jagen	Yes				Yes		Yes	
D.C.	Suter	Yes				Yes		Yes	
D.C.	Mahaney	Yes				Yes		Yes	
D.C.	Kolego-Markovich	Yes				Yes			No
D.C.	District of Col.*	Yes				Yes		Yes	

If your answer is "no" to all of the foregoing questions, you should proceed no further; your "no" answers constitute a verdict for defendants. If your answer to any of these questions is "yes," proceed to the next page.

* If you find the District of Columbia liable for the acts of employees, mark the space opposite the District of Columbia entry under "By alleged individual action."

2. Were any of the following defendants immune from responsibility as found in no. 1 above?

	Name of Defendant	Immune	Not Immune
FBI	Brennan		✓
	Moore		✓
	Jones		✓
	Grimaldi		✓
	Pangburn		✓
D.C.	Wilson		✓
	Herlihy		✓
	Acree		✓
	Bynum	✓	
	Scrapper		✓
	Jagen		✓
	Suter		✓
	Mahaney		✓
	Kolego-Markovich	✓	

Your "immune" answers constitute a verdict for each defendant whom you have found to be immune. If you answered "immune" to all of the foregoing questions in no. 2, you should proceed no further, unless you found the District of Columbia liable in question no. 1. If you have answered any of the foregoing questions in no. 2 "not immune," or found the District of Columbia liable in question no. 1, proceed to the next page.

3. Was the liability of any defendant about whom you answered "yes" to question no. 1 and as to which you answered "not immune" to question no. 2 barred by the Statute of Limitations?

	Name of Defendant	Claims Barred	Claims Not Barred
FBI	Brennan		✓
	Moore		✓
	Jones		✓
	Grimaldi		✓
	Pangburn		✓
D.C.	Wilson		✓
	Herlihy		✓
	Acree		✓
	Bynum	✓	
	Scrapper		✓
	Jagen		✓
	Suter		✓
	Mahaney		✓
	Kolego-Markovich	✓	

3a. If you found the District of Columbia liable in question no. 1, was that liability barred by the Statute of Limitations?

Claims barred [ ] Claims not barred [X]

(mark one of the above boxes only if liability has been found in question no. 1).

Your answer of "claims barred" in the questions above constitutes a verdict on those claims for each defendant so identified. If you answered "claims not barred" with respect to any defendant, you should proceed to the next page.

4. If, with respect to claims against a defendant, you have answered "yes" to question no. 1, "not immune" to question no. 2, and "claims not barred" to question no. 3, you should enter opposite the name of that defendant as your verdict the amount of compensatory damages (if any) you find to be required fairly and reasonably to compensate plaintiff Richard Pollock the amount of punitive damages (if any), and/or the amount of nominal damages (if any) to which you find plaintiff Richard Pollock is entitled.

Name of Defendant	Amount of Damages Compensatory*	Amount of Damages Nominal*	Amount of Damages Punitive	Total Damages
FBI				
Brennan	6250.00		3125.00	9375.00
Moore	5000.00		2500.00	7500.00
Jones	3750.00		1875.00	5625.00
Grimaldi	3125.00		1562.50	4687.50
Pangburn	3750.00		1875.00	5625.00
D.C.				
Wilson	3750.00		1875.00	5625.00
Herlihy	3125.00		1562.50	4687.50
Acree	2562.50		0	2562.50
Bynum	0		0	0
Scrapper	3125.00		0	3125.00
Jagen	2562.50		0	2562.50
Suter	2562.50		0	2562.50
Mahaney	1875.00		0	1875.00
Kolego-Markovich	0		0	0
Dist. of Col.	37,937.50		0	37,937.50

Walter H. Morton
FOREPERSON

*Note: You cannot award both compensatory damages and nominal damages.

Certificate of Service

I hereby certify that I have mailed a copy of the foregoing Plaintiffs' Motion for Time Within Which to Respond on Opposition to Attorneys Fees, Memorandum of Points and Authorities and Order this 18th day of March to:

David H. White, Esq.
10th & Penna. Ave. N.W.
Washington, D.C. 20530

George N. Barclay
Asst. Corporation Counsel
District Building
Washington, D.C. 20004

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.	:	
Plaintiffs	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

REPLY OF THE DISTRICT OF COLUMBIA DEFENDANTS TO PLAINTIFFS' OPPOSITION TO THE MOTION OF THE DISTRICT OF COLUMBIA DEFENDANTS JUDGMENT NOTWITHSTANDING THE VERDICT, OR IN THE ALTERNATIVE FOR A NEW TRIAL ON IN THE ALTERNATIVE, FOR A REMITTITUR

This civil action was commenced on July 16, 1976, by a complaint which alleged violations of plaintiffs' Constitutional Rights by the Federal Bureau of Investigation and the Metropolitan Police Department, D.C.

On December 23, 1981 the jury returned verdicts against all the Federal defendants and all but two of the District of Columbia defendants. On December 31, 1981 the District of Columbia defendants filed their motion for judgment notwithstanding the verdict or, in the alternative, for a new trial or, in the alternative, for a remittitur. On January 4, 1982 the District of Columbia defendants filed a supplemental memorandum of points and authorities. On February 10, 1982 after two extensions of time, plaintiffs filed their opposition to the District defendants' post-trial motion. The following reply is submitted in response to plaintiffs' opposition. For the sake of clarity, the responses contained in this reply are arranged in the same order as the arguments in plaintiffs' opposition.

I

Insufficient Evidence, Statute of Limitations and Qualified Immunity.

A

Insufficient Evidence

The substance of the testimony relating to each plaintiff is set forth in pages 4-13 of defendants Memorandum. As is amply demonstrated therein the injuries allegedly sustained by plaintiffs were, in fact, non existent or, in no way connected to the conduct of the District defendants. In response, plaintiffs' list eleven facts upon which, they argue, the jury could have reasonably concluded that the District defendants proximately caused plaintiffs damage. (See p. 2, Plaintiffs' Opposition). Examination of these "facts" reveals that none of them truly support a verdict against the District of Columbia defendants.

"Facts" (a), (b) and (c): (a) files were maintained on all demonstrator groups; (b) use of informants. (c) Hobson files, lack of guidelines.

These "facts" standing alone prove nothing. Intelligence gathering operations which result in files or any other compilation do not, under the facts of this case, give rise to a constitutional violation. (See Defendants' Memorandum, p. 21, 22 and cases cited therein). Plaintiff offered no evidence demonstrating how these facts impinged upon any of their constitutional rights or proximately caused them injuries recognized by law. Specificity as to conduct, defendant and harm is utterly lacking. Nor, indeed, is any specificity provided in plaintiffs' opposition.

"Facts" (d): disruptions of demonstration by District of Columbia police agents.

Such activity is beyond the scope of mere intelligence gathering and as such is actionable. However, there was no proof that such activity was under taken by any District of Columbia agent. One alleged, provocateur, Jan Francis, was not a member of the Intelligence Division or under the supervision of any District of Columbia defendant. The second identified provocateur, Ann Kolego-Markovich was found not liable. Accordingly, there was no competent evidence that any District of Columbia defendant or agent engaged in such activity. Thus, there is no connection between this fact and any plaintiff and/or defendant.

"Fact" (e): theft of mailing lists and contributions list from 1029 Vermont Avenue

Evidence on this issue indicated that the injuries sustained, if any, by the Washington Peace Center resulted from activities of the FBI. There was no testimony that the activities of the Metropolitan Police Department interfered in any way with activities of this plaintiff. (See defendant memorandum p. 13).

"Fact" (f): smashing of a xerox machine at 1029 Vermont Avenue.

While Spiker may have boasted about such an incident in his statement, the only evidence was the testimony of Sidney Peck that the machine was out of order. No plaintiff recalled a damaged machine or any harm from it, and it is certainly plausible, as Sidney Peck admitted, that the machine was simply out of order due to a mechanical malfunction.

"Fact" (g): contacts between the FBI and the Metropolitan Police Department.

Such contacts are legitimate and proper law enforcement function and do not give rise to constitutional violations (See p. 22, Defendant Memorandum).

"Fact" (h): destruction of Intelligence Division files in 1974.

Several District of Columbia defendants testified that the destruction was a routine purging of outdated material undertaken subsequent to the reorganization of the Intelligence Division. In light of the total absence of evidence to the contrary the jury could not properly have inferred an ulterior motive as suggested by plaintiffs.

"Fact" (i): money available to Metropolitan Police Department to augment Intelligence operation.

Plaintiffs' assertion that such a grant contributed to improper or illegal activity is unsupported by any evidence and is incorrect on its face.

"Fact" (j): Three plaintiffs' witnesses "suspected" the role of Steve Wilcox in disrupting telephone service to New MOBE Offices.

This allegation is sheer conjecture by plaintiffs, as is evidenced by plaintiffs' own use of the word "suspected." Moreover, even these suspicions were rebutted by direct testimony that such an individual was never employed by the District of Columbia defendants for any capacity.

"Fact" (k): unknown agents in under cover capacity.

Aside from the fact that the use of under cover agents is a legitimate law enforcement technique, there was no testimony as to /what these unknown agents did or how anything they did infringed upon any constitutional protected right of any of the plaintiffs'.

It is evident that these "facts" do little or nothing to fill the gaps and specific insufficiencies of evidence underlying plaintiffs' claims. Even if they were all true, they would only become actionable if they resulted in specific harm to a specific plaintiff and were causally connected

with the act of a defendant or defendants. Neither the evidence adduced by plaintiffs nor their opposition memorandum makes such a connection.

As to plaintiffs' claims regarding electronic surveillance, physical surveillance and supplying the public with false information. No evidence was adduced at trial which could support a finding of liability against the District defendants or these issues. Plaintiff Waskow was the only identified plaintiff over heard through electronic surveillance and given the uncertainty of whether the "bug" was placed through court order or one party consent, liability is unfounded. Moreover, whether consensual bugging is transgressed when the consenting party is absent is, by plaintiffs' own admission, an open question. Under these circumstances, there is no way it can be alleged that the District of Columbia defendants lacked a good faith reasonable belief in the propriety of the one party consensual bugging.

In sum, there was, as a matter of law insufficient evidence that particular District of Columbia defendants violated any rights of particular plaintiffs or proximately caused therein any compensable injuries. As such, there was no basis from which a jury could reasonably infer liability against the District of Columbia defendants. This observations is highlighted by plaintiffs inability to specify any such evidence in their opposition. Therefore, the District of Columbia defendants are now entitled to a judgment notwithstanding the verdict.

B

Qualified Immunity

Plaintiffs' argument against qualified immunity is unpersuasive in that it suggest improper inferences drawn by the jury and fails to include any competent evidence upon

which qualified immunity could be rebutted. There was no evidence to suggest that the destruction of the files was done with ulterior motives. Indeed, it was explained by several witnesses. Nor should the jury have been allowed to draw any inferences from the failure of the District of Columbia defendants to produce additional witnesses since plaintiffs were free to call any witness they chose to call and since, quite properly, no missing witenss instruction was given. Similarly, the mere fact that some of the organizations which were infiltrated were peaceful does not lead to a conclusion that the District of Columbia defendants acted unreasonably or in bad faith. Infiltration is not per se actionable, and the mere fact of such infiltration cannot overcome defendants qualified immunity. (See defendants memorandum of points and authorities at pp. 20-22).

C

Statute of Limitations

Plaintiffs fail to address any of the issues raised by the District of Columbia defendants on this issue. Instead they refer to three points, none of which is particularly relevant. As stated repeatedly there was no evidence that the destruction of the files was an attempt to conceal evidence. The only evidence was that the files were purged of out-dated material (see defendant memorandum p. 23, 24). Therefore, the jury could not infer that the purge constituted fraudulent or deliberate concealment. Secondly, the District of Columbia defendants were under no obligation to make their files public. Accordingly there were no additional facts to provide evidence of aggravation upon which a jury could find fraudulent or deliberate concealment. See Smith v. Nixon, 196 U.S. App. D.C. 276, 606 F.2d 1183, 1191, n. 44 (1979).

II

Liability under §42 U.S.C. §1985(3) and/or civil conspiracy.

As consistently maintained by the District of Columbia defendants, neither the District of Columbia nor any of its agents were subject to §1985(3) at any time relevant to this lawsuit. See District of Columbia defendants' pre-trial brief, District of Columbia defendants' memorandum p. 14-15). It is correct, as plaintiffs and the court note, that there is no state action requirement under §1985. It is erroneous, however, to then conclude that "the issue of whether the District of Columbia is a state a territory" loses its significance. Both District of Columbia v. Carter, 409 U.S. 418 (1973) and Hurd v. Hodge, 334 U.S. 24 (1948) attest to the significance of the issue. Plaintiffs' reliance on Hurd is inapposite since it is concerned with a statute deriving from the Civil Rights Act of 1866 at not the KKK Act of 1871 from which §1985 derives. The important point is that for §1985(3) to apply, the prohibited activities must have occurred in a "state or territory". Since the District of Columbia is not a "state or territory" within the meaning of section 1985(3), that provision cannot be applied in the case at bar.

Plaintiffs alleged and the jury found three conspiracies one involving the District of Columbia defendants, another involving the Federal defendants at a third consisting of both District of Columbia and Federal defendants. As stated in District of Columbia defendants' memorandum under the facts of this case, as a matter of law, no conspiracy could exist among the District of Columbia defendants. (See District of Columbia defendants' memorandum p. 16). The named District of Columbia defendants were all employees of a single entity and acted in furtherance of the policy of that entity. See Edmonds v. Dillar 485 F. Supp. 722,

729 (N.D. Ohio, 1980). See also 52 A.L.R. Federal 106 and cases cited therein. For the same reasons the District of Columbia itself cannot conspire with itself through its agents. These points were not addressed in plaintiffs' opposition and should be deemed conceded.

Likewise plaintiff does not respond to the District of Columbia defendant argument pertaining to the Metropolitan Police Department, FBI conspiracy except to the extent that they allege both entities targetting the same class. Plaintiffs fail to address the legitimacy of inter agency cooperation, differing objectives and lack of an agreement as raised in pages 18-19 of defendants memorandum. The evidence adduced at trial and alluded to in plaintiffs' opposition clearly fails to support a finding of a joint conspiracy.

III

Respondeat Superior

Plaintiffs mistakenly confuse policy with conduct. Under Monel v. N.Y.C. Department of Social Services, 436 U.S. 658 (1978) a municipality may not be liable under the theory of respondeat superior for constitutional torts. The mere fact that the District defendant were involved in intelligence work, which is a legistimate function, and the fact that misconduct may have occurred in some instance is not sufficient to impose liability upon the District of Columbia. There is simply no affirmative link between the adoption of the intelligence gathering policy and the alleged police misconduct which shows authorization or approval of such misconduct. See Rizzo v. Goode, 428 U.S. 362 (1976). (See defendant memorandum p. 25).

IV

Punitive Damages

Contrary to plaintiffs' assertion, there was no evidence that defendants Wilson and Herlihy either condoned or encouraged any alleged misconduct. Being high level supervisory personnel, they were not intimately connected with the day to day activities and can hardly be said to have acted with reckless disregard of plaintiffs' rights.

Finally, neither defendant is now employed by the District, both having retired. Accordingly neither the conduct of these defendants nor their present positions justify an award of punitive damages to deter any future conduct by them.

V

Inconsistent Verdicts

The issue of inconsistent verdicts was fully addressed in defendants memorandum /and supplemental memorandum. Plaintiffs' opposition does not, in fact, respond fully to the long list of inconsistencies explained at great length in defendants' memorandum. See defendants' memorandum, pp. 28-30 and defendant supplemental memorandum).

VI

Multiple Recovery

Plaintiffs' claim that there wasn't a multiple verdict because, according to plaintiff, the jury "determined an over all figure and then divided this sum by the number of defendants it found liable, proportaining it according to calpability." (Plaintiffs' opposition p. 9). Even if that were the case, it would indicate only that the jury improperly applied a comparative liability theory in determining damages. In fact, by assessing separate awards against each defendant, rather than one compensation to each

plaintiff, the jury effectively multipled the each awards to plaintiff by a factor of thirteen. (See defendant memorandum, pp. 29-30).

VII

Higher Award Against the District of Columbia.

It remain inexplicable how the District of Columbia as the employer of the individual District defendants and who can only act through its employees and not separately from then can be assessed separate and greater awards in addition to the awards against the individual District employees (see defendants' memorandum, p. 30). The District cannot be held liable under respondeat superior for constitutional torts of employees. (See Monell v. N.Y.C. Department of Social Services, 436 U.S. 568 (1978), and it can hardly be held liable, as plaintiff suggest, for constitutional torts of unidentified actors.

VIII

District Defendants liable for a Greater Share of the Total Damages Than Federal Defendants

Clearly the great weight of evidence was against the Federal defendants. The only District connection to this evidence was through the alleged conspiracies, the existence of which was unsupported legally and factually (see this reply, ante). Plaintiffs' assertion that "there is no requirement that an individual conspiritor be assessed only that amount which corresponds directly to his degree of involvement" (Plaintiffs' opposition, p. 10), Flies in the face of plaintiffs' attempt to justify the jury's "proportioning" the jury award, which is contained ir plaintiffs' defense of the multiple verdict on page 9 of plaintiffs' opposition.

IX

Contact with an excused juror

Plaintiffs' counsel's contacts with the excused juror were clearly in violation of the local rule 1-28 since that rule prohibits any contact with jurors both before and after discharge without prior court approval. See defendants' memorandum, p. 32. Plaintiffs' attempt to twist the clear import of Rule 1-28 is suprising, at best. Plaintiffs' explanation obviously does not meet the question of unfair advantage which plaintiffs obtained in using information from the contacted juror in formulation their closing arguments.

X

Excessive Verdict

The fact that plaintiffs' were not aware of the surveillance activities until years later (according to plaintiffs) belies their argument that they suffered any to significant emotional harm or that the conduct of the District defendants' thwarted plaintiffs' activities in any significant way.

Thus, the amount of this judgment is totally out of proportion to any harm that has been suffered by plaintiffs. Bearing no rational ralationship to the harm, it is excessive as a matter of law. (See defendants' memorandum pp. 33-34).

Conclusion

Based on the foregoing, the District of Columbia defendants respectfully move this court to set aside the verdict returned by the jury in this cause on December 23, 1981, and notwithstanding the same, to enter judgment in their favor. In the alternative, the District of Columbia defendants move this court to grant them a new trial or to

grant a substantial remittitur.

JUDITH W. ROGERS
Corporation Counsel, D.C.

JOHN H. SUDA
Deputy Corporation Counsel, D.C.

GEORGE N. BARCLAY [#248849]
Assistant Corporation Counsel, D.C.
Attorney for Defendants
District Building - Room 318
Washington, D.C. 20004
727-6303

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply of the District of Columbia Defendants To Plaintiffs' Opposition To The Motion Of The District of Columbia Defendants For Judgment Notwithstanding The Verdict, Or In The Alternative For A New Trial Or In The Alternative, For A Remittitur, was mailed, postage prepaid to, Ann Pillsbury, Esquire, Attorney for Plaintiffs, 17 Danford Street, Norway, Maine 04268; and David White, Esquire, Attorney for Federal Defendants, Department of Justice, Washington, D.C. 20530, this 19 day of February, 1982.

Assistant Corporation Counsel, D.C.
Attorney for Defendants
District Building - Room 318
Washington, D.C. 20004
727-6303

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	Civil Action
v.	)	
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MOTION BY FEDERAL DEFENDANTS FOR ENLARGEMENT OF TIME AND FOR BIFURCATION OF PROCEEDINGS RELATING TO ATTORNEYS' FEES

Defendants Charles D. Brennan, George C. Moore, Courtland J. Jones, Gerald T. Grimaldi, and Gerould W. Pangburn, through their undersigned counsel and pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, move for an enlargement of time to and including March 12, 1982, in which to respond to plaintiffs' motion for award of attorneys' fees. In addition, the federal defendants move for bifurcation of the attorneys' fees issue, first to litigate whether attorneys' fees are appropriate and then to determine how payment of any award should be apportioned among the defendants.

In support of this motion the federal defendants rely upon the attached memorandum of points and authorities.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

STANLEY S. HARRIS
United States Attorney

Brook Hedge
BROOK HEDGE

David H. White
DAVID H. WHITE

Attorneys, Department of Justice
9th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for Defendants Brennan, Moore, Jones, Grimaldi, and Pangburn

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	Civil Action
v.	)	
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION BY FEDERAL DEFENDANTS
FOR ENLARGEMENT OF TIME AND FOR BIFURCATION
OF PROCEEDINGS RELATING TO ATTORNEYS' FEES

Plaintiffs have filed their motion requesting recovery from defendants of $500,000 in attorneys' fees. This Court has ordered that defendants respond to the motion by February 26, 1982.

The federal defendants now request an additional enlargement of time to and including March 12, 1982, in which to file their opposition. In addition, federal defendants request that the Court undertake to resolve the attorneys' fees issue in two stages. The first stage would be the consideration of whether attorneys' fees may appropriately be awarded to plaintiffs and, if so, in what amount. If this issue is resolved in favor of plaintiffs, the second stage would be the determination of how responsibility to pay the award should be apportioned among the defendants. In addition, the second stage of the proceedings may include consideration of whether the United States should be liable for any portion of the attorneys' fee award.

Federal defendants have been delayed in the preparation of their opposition to plaintiffs' motion because their counsel, the Department of Justice, has detected, and has attempted to resolve, a potential conflict between the interests of the federal defendants and the policies of the Department of Justice. The potential conflict involves primarily the issue of whether the United States could be made to assume liability to pay any attorneys' fees award made against the federal defendants.

The recently enacted Equal Access to Justice Act, Public Law 96-481, 94 Stat. 2325, greatly expands the circumstances in which

the United States may be held liable for attorneys' fees. Among other things, the Act amended 28 U.S.C. § 2412 so that it now provides "[A] court may award reasonable fees and expenses of attorneys . . . to the prevailing party in any civil action by or against . . . any official of the United States acting in his or her official capacity. . . ." 28 U.S.C. § 2412(b).

On the basis of this statute, the federal defendants have a plausible argument that the United States rather than they, individually and personally, should pay any attorneys' fees awarded to plaintiffs; however, the policy of the Department of Justice is that the language quoted above does not impose liability on the United States for attorneys' fees in civil actions, such as this one, brought against federal employees under the principles enunciated in Bivens v. Six Unknown Agents, 403 U.S. 388 (1971). In other words, the Department of Justice, as counsel for the federal defendants, is precluded from presenting an argument which could be made in their behalf.

A potential conflict also exists among the federal defendants themselves. Each of them will desire to reduce his own liability for attorneys' fees and thus, perhaps, increase the liability of the others. It would therefore be inappropriate for all to be represented by the same counsel.

These conflicts relate only to the apportionment of any award of attorneys' fees. There appears to be no conflict inherent in the Department of Justice arguing that attorneys' fees are not appropriate or that the demand is excessive. As a consequence of this circumstance, the federal defendants request a two-stage consideration of the attorneys' fee issue. Should the second stage be necessary, the federal defendants may desire to retain other counsel.

Respectfully submitted,

J. PAUL McGRATH
Assistant Attorney General

STANLEY S. HARRIS
United States Attorney

BROOK HEDGE

DAVID H. WHITE

Attorneys, Department of Justice
9th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 633-4269

Attorneys for Defendants Brennan,
Moore, Jones, Grimald, and
Pangburn

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	)	
	)	
Plaintiffs,	)	
	)	Civil Action
v.	)	
	)	No. 76-1326
JERRY WILSON, et al.,	)	
	)	
Defendants.	)	

ORDER

This cause having come before the Court on motion by the federal defendants for an enlargement of time to and including March 12, 1982, within which to reply to plaintiffs' motion for attorneys' fees and for bifurcation of proceedings relating to attorneys' fees, and the Court being fully advised in the premises, it is this _____ day of _____, 1982,

ORDERED that the motion for enlargement of time to and including March 12, 1982, within which federal defendants may respond to plaintiffs' motion for attorneys' fees, be, and hereby is, granted; and it is further

ORDERED that the attorneys' fee issue will be resolved in two stages, with the Court addressing first whether attorneys' fees should be awarded and in what amount, and addressing second how payment of the award should be apportioned among the defendants.

_____
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify on this 26th day of February, 1982, I have served upon each counsel, by mailing postage prepaid, one copy of the foregoing Motion by Federal Defendants for an Enlargement of Time and for Bifurcation of Proceedings Relating to Attorneys' Fees, with accompanying memorandum and proposed Order.

Herb Semmel, Esquire
Urban Law Institute for the
Antioch School of Law
1624 Crescent Place, N.W.
Washington, D.C. 20009

Anne Pilsbury, Esquire
17 Danforth Street
Norway, Maine 04268

Laura Bonn, Esquire
Assistant Corporation Counsel
District Building
14th and E Street, N.W.
Washington, D.C. 20004

Daniel Schember, Esquire
Gaffney, Anspach, Schember,
Klimaski & Marks, P.C.
1712 N Streets, N.W.
Washington, D.C. 20036

DAVID H. WHITE
Attorney, Department of Justice
Washington, D.C.

D.C. Jury Instructions

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al	:	
Plaintiffs,	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

USE OF INFORMANTS

The use of informants by law enforcement agencies to obtain information does not standing alone constitute a violation of constitutional or other legal rights. Likewise use of police officers as"infiltrator" or undercover agents does not give use to any claim of violation of constitutional rights. The law enforcement agency becomes liable for the acts of the informant only where the informant commits an act which is in itself a violation of a constitutional or legal right and where the informant is either continually controlled by the law enforcement agency or is specifically directed to do or commit a particular act.

According you should not consider the evidence regarding informants unless plaintiffs have proved by a preponderance of the evidence that the informant was specifically directed or continuously controlled by one of the defendants and committed and act which in itself was a violation of the constitutional or legal rights of one of the plaintiffs.

Socialist Workers Party v. Attorney General, 510 F. 2d 253 (2nd Cir. 1974); Handshu v. Special Services Division, 349 F. Supp. 766, 769 (S.D. N.Y. 1972)
Slagle v. United States, 612 F. 2d 1157, 1163 (9th Cir. 1980); cF. United States v. Orleans, 425. U.S. 807 (1976)

INFORMERS

SWP v. AG, 510 F.2d 253 (2d Cir. 1974).

Ct App reversed Griesa's granting of an injunction restraining FBI from attending or surveilling YSA convention. On basis of affidavit submitted by FBI saying that a political tendency (IT) in SWP regards as its most impt priority the leading of the YSA to adopt the IT's views on the use of violence, Ct App reversed, saying "The FBI has a right, indeed a duty, to keep itself informed with respect to the possible commission of crimes; it is not obliged to wear blinders until it may be too late for prevention."

Dictum

[Quotes w approval Handschu, also relied on by Δs: "The use of informers & infiltrators by itself does not give rise to any claim of violation of constitutional rights." 2d Cir., in making decision, acknowledged that an impt issue deserving treatment on full record w ample time for reflection -- none of which they had here.

Handschu v. Special Services Division, 349 F. Supp. 766 (S.D.N.Y. 1972).

M/dismiss complaint brought by 16 political people denied. Quote from Handschu above cites as authority the Hoffa case, which dealt w informers in context of an ongoing criminal investigation. Further, decision itself observes at 769-770: "[T]hose so engaged [in the use of informers] may not overstep constitutional bounds; the Bill of Rights protects individuals against excesses and abuses in such activities. Further, it distinguishes between "types" of informer activity: informer and infiltration activities that are unobjectionable because undertaken in context of a legitimate law-enforcement function not unobjectionable when undertaken in a context unrelated to a legitimate law-enforcement function.

Slagle v. U.S., 612 F.2d 1157 (9th Cir. 1980).

P brought suit under FTCA after being injured in a shoot-out at which he was present as the result of activities by a BNDD informer. Partial sum'y jdgt for govt. On appeal, affirmed. Held, informer acted neither as employee nor

as independent contractor of govt. Informer failed to inform govt was attending a drug-related mtg, at which he sought TI, and altho specifically required to obtain approval before undertaking any assignment related to his informer activities, had not obtained approval to attend this meeting. Ct in dictum said given long relationship between govt & a particular informant, govt might be held impliedly to have approved an act taken by informer 5 prior authorization. Clearly inapposite. Issue was when could govt under FTCA be held liable for informer's negligence.

U.S. v. Orleans, 425 U.S. 807 (1976).

Issue: whether a community action agency funded under the Economic Opportunity Act of 1964 is a federal instrumentality or agency for purposes of FTCA liability. Held, no.

INTENT

Plaintiffs allege that the defendants acted willfully with the intention of violating their constitutional and civil rights. In this regard willfully means not only voluntarily and intentionally but also includes the specific intent to do the act which the law forbids. Thus. if you find that defendants acted carelessly or inadvertenly, such conduct does not support a finding of willfully. If you find from a preponderance of the evidence that the defendants acted with a bad purpose to disobey or disregard the law then you may find that the defen-

---

1. United States v. Patrick, 542 F 2d 381 (7th Cir., 1976) cert. denied 430 U.S. 931, 97 S. Ct. 1551, 51 L. Ed 2d 775 (1977)

2. United States v. Falk, 605 F 2d 1005 (7th Cir. 1979) cert. denied 445 U.S. 903, 100 S. Ct. 1079, 63 L. Ed. 2d 319 (1980)

INTENT

U.S. v. Patrick, 542 F2d 381 (7th Cir. 1976).

Δ prosecuted for criminal contempt. Held, inter alia, that jury was properly advised that crime of crim contempt requires a specific intent to consciously disregard an order of the court. As to intent in this context need establish only that refusal to testify volitional & done with awareness it was wrongful. Wholly inapposite, dealing as it does ẽ concept of "specific intent" in context of a criminal case.

U.S. v. Falk, 605 F2d 1005 (7th Cir. 1979).

Appellant convicted of filing & subscribing to ~~by~~ a false and fraudulent income tax return by knowingly and willfully understating his gross income. Trial ct's definition of terms "knowingly" & "willfully" appear in fn. 9 at 1010 & from it Δs have taken "carelessly or inadvertently" language. Again, wholly inapposite. A criminal case and an effort to avoid very precise language of Wood v. Strickland.

FIRST AMENDMENT CLAIMS

Plaintiffs allege that the defendants acts violated their rights of free speech and association as protected under the First Amendment to the Constitution. While these rights are undeniably important, they are not absolute or unqualified and may be subordinated to society's need to maintain the social order. Thus where the government acts pursuant to a lawful and necessary governmental purpose these rights may be permissably infringed and these acts do not constitute the type of abridgement proscribed by the Constitution. The impermissable impact which the First Amendment prohibits must arise from governmental conduct which subjects plaintiffs to a present or future exercise, or threatened exercise of coercive governmental power.

Thus, plaintiffs must prove by a preponderance of the evidence that defendants' acts directly abridged their speech or association by means that were coercive, compulsory or proscriptive in nature and which produced specific objective harm. You must consider all the evidence and inquire whether each plaintiff has proven such an abridgement by a particular defendant or by a group of defendants. You must distinguish between a direct abridgement and effects which are only incidental or consequential since only a direct abridgement can support a claim for damages under the First Amendment.

If upon considering the evidence you conclude that no plaintiff was in fact deprived of his or her rights under the First Amendment then you must return a verdict for the defendants.

Greer

United Public Workers v. Mitchell, 330 U.S. 75, 95 (~~1974~~) *1947*
~~Green~~ v. Spock, 424 U.S. 828 (1976)
Reporters Committee for Freedom of the Press v. American Telephone & Telegraph Co. 593 F 2d 1030. 1052, ___U.S. App. D.C. (1978)

Laird v. Tatum, 408 U.S. 1, 11-14 (1972)
Reporters Committee for Freedom of the Press, supra
Martinez v. California, 444 U.S. 277, 281 and 285 (1980).

FIRST A.

United Public Workers v. Mitchell, 330 U.S. 75 (1947).
Issue: whether a particular provision of Hatch Act was constitutional. Argued that provision violated civil servant's freedoms under First, Ninth, Tenth Amendments. Can political activities engaged in by civil servant in his free time be regulated? Held, yes.

Greer v. Spock, 424 U.S. 828 (1976).
Dr. Spock, other candidates for national political office brought suit against commander of Fort Dix, asserting 1st, 5th A. violations & seeking injunction against post regulation barring them from distributing -- on post grounds -- campaign lit. Reg also prohibits demos, political speeches on grounds. S. Ct. upheld. Emphasis on special nature of military life.

Reporters Committee v. ATT, 593 F.2d 1030 (D.C. Cir. 1978).
Issue: whether govt access to newspapers', reporters' long-distance billing records abridges the 1st-A. news-gathering rights. Held, no. In order to have "chilling effect", must also be "present or future exercise, or threatened exercise, of coercive power."

Laird v. Tatum, 408 U.S. 1 (1972).
Mere surveillance, i.e., "mere existence" of Army's data-gathering system produces impermissible chilling effect on 1st A. rights. Not talking here about mere data-gathering. Was no ev of illegal or unlawful surveillance activities. No complaint as to any specific action.

Martinez v. California, 444 U.S. 277 (1980).
State stat immunizing parole officials from injuries resulting from parole decisions held not violative of DP; suit against officials under § 1983 by survivors of parolee's murder victim not actionable. Child's death too

remote a consequence of parole decision to hold officials liable.

FOURTH AMENDMENT CLAIMS

Plaintiffs allege that the defendants acts violated their rights under the Fourth Amendment to the constitution. The Fourth Amendment protects a citizen from unreasonable search of his home or person or an unreasonable seizure of his person, papers or other possessions by government agents.

A person is seized within the meaning of the Fourth Amendment when his physical freedom of movement is restrained by virtue of a show of authority or physical force. A search is unreasonable if done without legal justification or in a manner beyound that which the circumstances require.

Observation or acquisition of information about a person is not a violation of the Fourth Amendment even though that person may not intend government agents to acquire or learn such information. Thus, if a person does something or discloses something in a setting that is observable by governmental agents, no violation of the Fourth Amendment has been committed. Nor is the Fourth Amendment violated where government agents acquire information through an informant or an undercover agent who participated in the conversation or meeting which the person intended to be private. The Fourth Amendment does not protect misplaced trust under such circumstances.

Applying these principles you must consider all evidence and if you find that a plaintiff was seized or if defendants obtained information about the plaintiff through an unreasonable means then you may find for the plaintiff.

If you find that there was no seizure of a plaintiff or if defendants acquired information through mere observation or through an informant whom plaintiff had trusted then you must return a verdict for the defendants.

Bell v. Wolfish, 441 U.S. 520, 558, 59 (1979)
United States v. Mendehall, 446 U.S. 544, 554-55 (1980)

Katz v. United States, 389 U.S. 347, 351 (1967)
Lewis v. United States, 383 U.S. 206, 210-11 (1966)
United States v. White 401 U.S. 745 (1971)
Hoffa v. United States, 385 U.S. 293, 302 (1966)

McClellan:
1) As must conspire;
2) for purpose of depriving, directly or indirectly, any person or EP of laws or of equal privileges & immunities; and
3) As must act in furtherance of object of conspiracy, whereby a) one was injured in his person or property or b) deprived of having or exercising any right or priv.

PLAINTIFF'S CLAIMS UNDER
42 U.S.C. §1985 (3)

Plaintiffs allege that defendants actions entitles them to damages under a civil rights statute, Title 42 of the United States Code, Section 1985, Subsection 3. Many of the plaintiffs claims in which I have previously instructed you pertain to the rights which form the basis of plaintiffs' claims under this section and you should apply those principle to this claim as well.

To establish a claim under 42 U.S.C. §1985 (3) plaintiffs must prove by a preponderance of the evidence five distinct elements:

First, that the defendants entered into a conspiracy, i.e., a common design or plan to do an unlawful act or to achieve a lawful end through unlawful means;

Second, that an overt act was committed in furtherance of the conspiracy;

Third, that the defendants acted with the purpose of depriving plaintiffs of the equal protection of the law or of one or more of the fundamental rights guaranteed under our constitution;

Fourth, that the act or acts in furtherance of the conspiracy injured plaintiffs person or property;

Fifth, that the defendants were motivated by a racial or otherwise discriminatory purpose;

As I stated previously, plaintiff must establish by a preponderance of the evidence each of the five elements. Failure to prove any single element precludes them from receiving damages under this section. You should consider and apply my other instruction concerning plaintiffs other claims with respect to the deprivation of equal protection and fundamental rights which plaintiffs must establish here. You should also apply my instruction or conspiracy as that must also be established.

If you find by a preponderance of the evidence that the five elements have been establish you may render a verdict in plaintiff's favor on this claim. If you cannot find that all five elements have been established, you must render a verdict for the defendants.

Griffin v. Breckinridge, 403 U.S. 88 (1971);
McLellan v. Mississippi Power and Light Co. 545 F. 2d 919, 923 (5th Cir. 1977)

McLellan:

3 1985 suit by discharged private employee against employer, unions. Discharged because filed petition in voluntary bankruptcy. Page they cite sets forth four elements Π must allege to state a cause of action under 1985(3). 1985(3) "not designed to redress every interference with one's behavior, even when that behavior is the exercise of what we describe as a 'fundamental right.' ...[T]he object of a section 1985(3) conspiracy must be to deprive another of the enjoyment of legal rights by independently unlawful conduct."

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,
Plaintiffs,

v.

JERRY WILSON, et al.,
Defendants.

Civil Action No. 76-1326

FILED
DEC 23 1981
JAMES E. DAVEY, CLERK

SPECIAL VERDICT FORM

1. Did any of the following defendants injure plaintiff Washington Area Women Strike For Peace in the exercise of that plaintiff's First Amendment rights or participate in one or more conspiracies that so injured plaintiff Washington Area Women Strike For Peace?

	Name of Defendant	By claimed Individual Action		By claimed F.B.I. Conspiracy		By claimed M.P.D. Conspiracy		By claimed Joint Conspiracy	
		Yes	No	Yes	No	Yes	No	Yes	No
FBI	Brennan		No		No				No
FBI	Moore		↓		↓				↓
FBI	Jones								
FBI	Grimaldi								
FBI	Pangburn				↓				
D.C.	Wilson								
D.C.	Herlihy								
D.C.	Acree								
D.C.	Bynum								
D.C.	Scrapper								
D.C.	Jagen								
D.C.	Suter								
D.C.	Mahaney								
D.C.	Kolego-Markovich								
D.C.	District of Col.*		↓						↓

If your answer is "no" to all of the foregoing questions, you should proceed no further; your "no" answers constitute a verdict for defendants. If your answer to any of these questions is "yes," proceed to the next page.

---

* If you find the District of Columbia liable for the acts of employees, mark the space opposite the District of Columbia entry under "By alleged individual action."

2. Were any of the following defendants immune from responsibility as found in no. 1 above?

	Name of Defendant	Immune	Not Immune
FBI	Brennan		
	Moore		
	Jones		
	Grimaldi		
	Pangburn		
D.C.	Wilson		
	Herlihy		
	Acree		
	Bynum		
	Scrapper		
	Jagen		
	Suter		
	Mahaney		
	Kolego-Markovich		

Your "immune" answers constitute a verdict for each defendant whom you have found to be immune. If you answered "immune" to all of the foregoing questions in no. 2, you should proceed no further, unless you found the District of Columbia liable in question no. 1. If you have answered any of the foregoing questions in no. 2 "not immune," or found the District of Columbia liable in question no. 1, proceed to the next page.

3. Was the liability of any defendant about whom you answered "yes" to question no. 1 and as to which you answered "not immune" to question no. 2 barred by the Statute of Limitations?

	Name of Defendant	Claims Barred	Claims Not Barred
FBI	Brennan		
	Moore		
	Jones		
	Grimaldi		
	Pangburn		
D.C.	Wilson		
	Herlihy		
	Acree		
	Bynum		
	Scrapper		
	Jagen		
	Suter		
	Mahaney		
	Kolego-Markovich		

3a. If you found the District of Columbia liable in question no. 1, was that liability barred by the Statute of Limitations?

Claims barred ☐ Claims not barred ☐

(mark one of the above boxes only if liability has been found in question no. 1).

Your answer of "claims barred" in the questions above constitutes a verdict on those claims for each defendant so identified. If you answered "claims not barred" with respect to any defendant, you should proceed to the next page.

4. If, with respect to claims against a defendant, you have answered "yes" to question no. 1, "not immune" to question no. 2, and "claims not barred" to question no. 3, you should enter opposite the name of that defendant as your verdict the amount of compensatory damages (if any) you find to be required fairly and reasonably to compensate plaintiff Washington Area Women Strike For Peace the amount of punitive damages (if any), and/or the amount of nominal damages (if any) to which you find plaintiff Washington Area Women Strike For Peace is entitled.

	Name of Defendant	Amount of Damages Compensatory*	Amount of Damages Nominal*	Amount of Damages Punitive	Total Damages
FBI	Brennan				
	Moore				
	Jones				
	Grimaldi				
	Pangburn				
D.C.	Wilson				
	Herlihy				
	Acree				
	Bynum				
	Scrapper				
	Jagen				
	Suter				
	Mahaney				
	Kolego-Markovich				
	Dist. of Col.				

Walter H. Mator
FOREPERSON

*Note: You cannot award both compensatory damages and nominal damages.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Civil Action No. 76-1326
	:	
JERRY WILSON, et al.,	:	
	:	
Defendants.	:	

SPECIAL VERDICT FORM

1. Did any of the following defendants ~~independently~~ injure plaintiff _____ in the exercise of his First Amendment rights or participate in one or more conspiracies ~~that~~ so injured plaintiff

Name of Defendant	By ~~alleged~~ claimed Individual Action		By alleged F.B.I. Conspiracy		By alleged M.P.D. Conspiracy		By alleged Joint Conspiracy	
	Yes	No	Yes	No	Yes	No	Yes	No
Brennan								
Moore								
Jones								
Grimaldi								
Pangburn								
Wilson								
Herlihy								
Acree								
Scrapper								
Jagen								
Suter								
Mahaney								
~~Markovich~~ Kalegos								
District of Col.*								

If your answer is "no" to all of the foregoing questions, you should proceed no further; your "no" answers constitute a verdict for defendants. If your answer to any of these questions is "yes," proceed to the next page.

---

* If you find the District of Columbia liable for the acts of employees, mark the space opposite the District of Columbia entry under "By alleged individual action."

2. Were any of the following defendants immune from responsibility as found in no. 1 above, because he was engaged in law enforcement and reasonably and in good faith believed that his conduct was lawful? needs malice ?

Name of Defendant	Immune	Not Immune
Brennen		
Moore		
Jones		
Grimaldi		
Pangburn		
Wilson		
Herlihy		
Acree		
Scrapper		
Jagen		
Suter		
Mahaney		
Markovich		

Your "immune" answers constitute a verdict for each defendant whom you have found to be immune. If you answered "immune" to all of the foregoing questions in no. 2, you should proceed no further, unless you found the District of Columbia liable in question no. 1. If you have answered any of the foregoing questions in no. 2 "not immune," or found the District of Columbia liable in question no. 1, proceed to the next page.

3. Was the liability of any defendant about whom you answered "yes" to question no. 1 and as to which you answered "not immune" to question no. 2 barred by the Statute of Limitations?

Name of Defendant	Claims Barred	Claims Not Barred
Brennen		
Moore		
Jones		
Grimaldi		
Pangburn		
Wilson		
Herlihy		
Acree		
Scrapper		
Jagen		
Suter		
Mahaney		
Markovich		
Dist. of Col.		

3a. If you found the District of Columbia liable in question no. 1, was that liability barred by the Statute of Limitations?

Claims barred _____ Claims not barred _____

(mark one one of the above boxes only if liability has been found in question no. 1).

Your answer of "claims barred" in the questions above constitutes a verdict for each defendant so identified. If you answered "claims not barred" with respect to any defendant, you should proceed to the next page.

4. If, with respect to claims against a defendant, you have answered "yes" to question no. 1, "not immune" to question no. 2, and "claims not barred" to question no. 3, you should enter opposite the name of that defendant as your verdict the amount of compensatory damages (if any) you find to be required fairly and reasonably to compensate

plaintiff _____ the amount of punitive damages (if any), and/or the amount of nominal damages (if any) to which you find

plaintiff _____ is entitled.

Name of Defendant	Amount of Damages Compensatory	Amount of Damages Punitive	Amount of Damages Nominal	Total Damages
Brennen				
Moore				
Jones				
Grimaldi				
Pangburn				
Wilson				
Herlihy				
Acree				
Scrapper				
Jagen				
Suter				
Mahaney				
Markovich				
Dist. of Col.				

* (in of above both comp + nom

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,
Plaintiffs,

v.

JERRY WILSON, et al.,
Defendants.

Civil Action No. 76-1326

FILED

JUN 1 1982

JAMES F. DAVEY, Clerk

SPECIAL VERDICT FORM

1. Did any of the following defendants injure plaintiff _____ in the exercise of that plaintiff's First Amendment rights or participate in one or more conspiracies that so injured plaintiff

	Name of Defendant	By claimed Individual Action		By claimed F.B.I. Conspiracy		By claimed M.P.D. Conspiracy		By claimed Joint Conspiracy	
		Yes	No	Yes	No	Yes	No	Yes	No
FBI	Brennan								
FBI	Moore								
FBI	Jones								
FBI	Grimaldi								
FBI	Pangburn								
D.C.	Wilson								
D.C.	Herlihy								
D.C.	Acree								
D.C.	Bynum								
D.C.	Scrapper								
D.C.	Jagen								
D.C.	Suter								
D.C.	Mahaney								
D.C.	Kolego-Markovich								
D.C.	District of Col.*								

If your answer is "no" to all of the foregoing questions, you should proceed no further; your "no" answers constitute a verdict for defendants. If your answer to any of these questions is "yes," proceed to the next page.

---

* If you find the District of Columbia liable for the acts of employees, mark the space opposite the District of Columbia entry under "By alleged individual action."

2. Were any of the following defendants immune from responsibility as found in no. 1 above?

	Name of Defendant	Immune	Not Immune
FBI	Brennen		
	Moore		
	Jones		
	Grimaldi		
	Pangburn		
D.C.	Wilson		
	Herlihy		
	Acree		
	Bynum		
	Scrapper		
	Jagen		
	Suter		
	Mahaney		
	Kolego-Markovich		

Your "immune" answers constitute a verdict for each defendant whom you have found to be immune. If you answered "immune" to all of the foregoing questions in no. 2, you should proceed no further, unless you found the District of Columbia liable in question no. 1. If you have answered any of the foregoing questions in no. 2 "not immune," or found the District of Columbia liable in question no. 1, proceed to the next page.

3. Was the liability of any defendant about whom you answered "yes" to question no. 1 and as to which you answered "not immune" to question no. 2 barred by the Statute of Limitations?

	Name of Defendant	Claims Barred	Claims Not Barred
FBI	Brennen		
	Moore		
	Jones		
	Grimaldi		
	Pangburn		
D.C.	Wilson		
	Herlihy		
	Acree		
	Bynum		
	Scrapper		
	Jagen		
	Suter		
	Mahaney		
	Kolego-Markovich		

3a. If you found the District of Columbia liable in question no. 1, was that liability barred by the Statute of Limitations?

Claims barred ☐ Claims not barred ☐

(mark one of the above boxes only if liability has been found in question no. 1).

Your answer of "claims barred" in the questions above constitutes a verdict on those claims for each defendant so identified. If you answered "claims not barred" with respect to any defendant, you should proceed to the next page.

4. If, with respect to claims against a defendant, you have answered "yes" to question no. 1, "not immune" to question no. 2, and "claims not barred" to question no. 3, you should enter opposite the name of that defendant as your verdict the amount of compensatory damages (if any) you find to be required fairly and reasonably to compensate plaintiff
the amount of punitive damages (if any), and/or the amount of nominal damages (if any) to which you find plaintiff
is entitled.

Name of Defendant	Amount of Damages Compensatory*	Amount of Damages Nominal*	Amount of Damages Punitive	Total Damages
Brennen				
Moore				
Jones				
Grimaldi				
Pangburn				
Wilson				
Herlihy				
Acree				
Bynum				
Scrapper				
Jagen				
Suter				
Mahaney				
Kolego-Markovich				
Dist. of Col.				

FBI

D.C.

FOREPERSON

*Note: You cannot award both compensatory damages and nominal damages.

EXHIBIT 15

SAC, Albany

August 25, 1967

Director, FBI

PERSONAL ATTENTION TO ALL OFFICES

COUNTERINTELLIGENCE PROGRAM
BLACK NATIONALIST - HATE GROUPS
INTERNAL SECURITY

Offices receiving copies of this letter are instructed to immediately establish a control file, captioned as above, and to assign responsibility for following and coordinating this new counterintelligence program to an experienced and imaginative Special Agent well versed in investigations relating to black nationalist, hate-type organizations. The field office control file used under this program may be maintained in a pending inactive status until such time as a specific operation or technique is placed under consideration for implementation.

The purpose of this new counterintelligence endeavor is to expose, disrupt, misdirect, discredit, or otherwise neutralize the activities of black nationalist, hate-type organizations and groupings, their leadership, spokesmen, membership, and supporters, and to counter their propensity for violence and civil disorder. The activities of all such groups of intelligence interest to this Bureau must be followed on a continuous basis so we will be in a position to promptly take advantage of all opportunities for counterintelligence and to inspire action in instances where circumstances warrant. The pernicious background of such groups, their duplicity, and devious maneuvers must be exposed to public scrutiny where such publicity will have a neutralizing effect. Efforts of the various groups

2 - Atlanta
2 - Baltimore
2 - Boston
2 - Buffalo
2 - Charlotte
2 - Chicago
2 - Cincinnati
2 - Cleveland
2 - Detroit
2 - Jackson
2 - Los Angeles
2 - Memphis
2 - Newark
2 - New Orleans
2 - New York
2 - Philadelphia
2 - Phoenix
2 - Pittsburgh
2 - Richmond
2 - St. Louis
2 - San Francisco
2 - Washington Field Office

(53)

AUG 29 1967

FILED
JUN 1 1982
JAMES F. DAVEY, Clerk

Civil Action No. 76-1326
Appendix II-1

Letter to SAC, Albany
RE: COUNTERINTELLIGENCE PROGRAM
BLACK NATIONALIST - HATE GROUPS

to consolidate their forces or to recruit new or youthful adherents must be frustrated. No opportunity should be missed to exploit through counterintelligence techniques the organizational and personal conflicts of the leaderships of the groups and where possible an effort should be made to capitalize upon existing conflicts between competing black nationalist organizations. When an opportunity is apparent to disrupt or neutralize black nationalist, hate-type organizations through the cooperation of established local news media contacts or through such contact with sources available to the Seat of Government, in every instance careful attention must be given to the proposal to insure the targeted group is disrupted, ridiculed, or discredited through the publicity and not merely publicized. Consideration should be given to techniques to preclude violence-prone or rabble-rouser leaders of hate groups from spreading their philosophy publicly or through various mass communication media.

Many individuals currently active in black nationalist organizations have backgrounds of immorality, subversive activity, and criminal records. Through your investigation of key agitators, you should endeavor to establish their unsavory backgrounds. Be alert to determine evidence of misappropriation or fraud or other types of personal misconduct on the part of militant nationalist leaders so any practical or warranted counter-intelligence may be instituted.

Intensified attention under this program should be afforded to the activities of such groups as the

. Particular emphasis should be given to extremists who direct the activities and policies of revolutionary or militant groups such as
and

At this time the Bureau is setting up no requirement for status letters to be periodically submitted under this program. It will be incumbent upon you to insure the program is being afforded necessary and continuing attention and that no opportunities will be overlooked for counterintelligence action.

This program should not be confused with the program entitled "Communist Party, USA, Counterintelligence Program, Internal Security - C," which is directed

Letter to SAC, Albany
RE: COUNTERINTELLIGENCE PROGRAM
BLACK NATIONALIST - HATE GROUPS

against the Communist Party and related organizations, or the program entitled "Counterintelligence Program, Internal Security, Disruption of Hate Groups," which is directed against Klan and hate-type groups primarily consisting of white memberships.

All Special Agent personnel responsible for the investigation of black nationalist, hate-type organizations and their memberships should be alerted to our counterintelligence interest and each investigative agent has a responsibility to call to the attention of the counterintelligence coordinator suggestions and possibilities for implementing the program. You are also cautioned that the nature of this new endeavor is such that under no circumstances should the existence of the program be made known outside the Bureau and appropriate within-office security should be afforded to sensitive operations and techniques contained under the program.

No counterintelligence action under this program may be initiated [illegible] without Bureau authorization.

You are urged to take an enthusiastic and imaginative approach to this new counterintelligence endeavor and the Bureau will be pleased to entertain any suggestions or techniques you may recommend.

-3-

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

UNITED STATES GOVERNMENT

Memorandum

FILED

JUN 1 1982

JAMES F. DAVEY, Clerk

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

TO : Mr. W. C. Sullivan

DATE: February 29, 1968

FROM : G. C. Moore

1 - Mr. C. D. DeLoach
1 - Mr. W. C. Sullivan
1 - Mr. G. C. Moore
1 - Mr. T. D. Rushing
1 - Mr. T. J. Deakin

SUBJECT: COUNTERINTELLIGENCE PROGRAM
BLACK NATIONALIST-HATE GROUPS
RACIAL INTELLIGENCE

PURPOSE:

To expand the Counterintelligence Program designed to neutralize militant black nationalist groups from 23 to 41 field divisions so as to cover the great majority of black nationalist activity in this country.

BACKGROUND:

By letter dated August 25, 1967, 23 field offices were advised of a new Counterintelligence Program designed to neutralize militant black nationalists and prevent violence on their part. Goals of this program are to prevent the coalition of militant black nationalist groups, prevent the rise of a leader who might unify and electrify these violence-prone elements, prevent these militants from gaining respectability and prevent the growth of these groups among America's youth.

CURRENT DEVELOPMENTS:

In view of the tremendous increase in black nationalist activity, and the approach of summer, this program should be expanded and these goals should be reiterated to the field. Attached airtel also instructs the field to submit periodic progress letters to stimulate thinking in this area.

DE-5 REC 18 100-448-19

Attached airtel also reminds the field that counterintelligence suggestions to expose these militants or neutralize them must be approved by the Bureau.

5 MAR 11 1968

ACTION:

That attached airtel expanding this program, defining goals and instructing periodic progress letters be submitted be sent Albany and the other listed field offices.

Enclosure 3-6-68

1-ENCLOSURE
TJD:rmm (6)

426413

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE. Civil Action No. 76-1326
Appendix II-2

435123

5-TJD

FBI

Date: 3/4/68

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL _____ (Priority)

To: SAC, Albany PERSONAL ATTENTION

From: Director, FBI (100-448006)

COUNTERINTELLIGENCE PROGRAM
BLACK NATIONALIST-HATE GROUPS
RACIAL INTELLIGENCE

Title is changed to substitute Racial Intelligence for Internal Security for Bureau routing purposes.

PERSONAL ATTENTION FOR ALL THE FOLLOWING SACs

2 - Atlanta
2 - Baltimore
2 - Birmingham
2 - Boston
2 - Buffalo
2 - Charlotte
2 - Chicago
2 - Cincinnati
2 - Cleveland
2 - Denver
2 - Detroit
2 - Houston
2 - Indianapolis
2 - Jackson
2 - Jacksonville
2 - Kansas City
2 - Los Angeles
2 - Memphis
2 - Miami
2 - Milwaukee
2 - Minneapolis
2 - Mobile
2 - Newark
2 - New Haven
2 - New Orleans
2 - New York
2 - Omaha
2 - Philadelphia
2 - Phoenix
2 - Pittsburgh
2 - Portland
2 - Richmond
2 - Sacramento
2 - San Diego
2 - San Francisco
2 - Seattle
2 - Springfield
2 - St. Louis
2 - Tampa
2 - WFO

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE.

2 copies made 8 pgs 1-6
12/1/77 JTM
re Capitol
for review at [illegible] by NSCA re 11/30/77 request.
(See Bufile 62-117290)

Sent Via _____

ENCLOSURE

File - 5 + 80

100-448006-19

Airtel to SAC, Albany
RE: COUNTERINTELLIGENCE PROGRAM
BLACK NATIONALIST-HATE GROUPS

BACKGROUND

By letter dated 8/25/67 the following offices were advised of the beginning of a Counterintelligence Program against militant Black Nationalist-Hate Groups:

Albany	Memphis
Atlanta	Newark
Baltimore	New Orleans
Boston	New York
Buffalo	Philadelphia
Charlotte	Phoenix
Chicago	Pittsburgh
Cincinnati	Richmond
Cleveland	St. Louis
Detroit	San Francisco
Jackson	Washington Field
Los Angeles	

Each of the above offices was to designate a Special Agent to coordinate this program. Replies to this letter indicated an interest in counterintelligence against militant black nationalist groups that foment violence and several offices outlined procedures which had been effective in the past. For example, Washington Field Office had furnished information about a new Nation of Islam (NOI) grade school to appropriate authorities in the District of Columbia who investigated to determine if the school conformed to District regulations for private schools. In the process WFO obtained background information on the parents of each pupil.

The Revolutionary Action Movement (RAM), a pro-Chinese communist group, was active in Philadelphia, Pa., in the summer of 1967. The Philadelphia Office alerted local police, who then put RAM leaders under close scrutiny. They were arrested on every possible charge until they could no longer make bail. As a result, RAM leaders spent most of the summer in jail and no violence traceable to RAM took place.

The Counterintelligence Program is now being expanded to include 41 offices. Each of the offices added to this program should designate an Agent familiar with black

nationalist activity, and interested in counterintelligence, to coordinate this program. This Agent will be responsible for the periodic progress letters being requested, but each Agent working this type of case should participate in the formulation of counterintelligence operations.

GOALS

For maximum effectiveness of the Counterintelligence Program, and to prevent wasted effort, long-range goals are being set.

1. Prevent the coalition of militant black nationalist groups. In unity there is strength; a truism that is no less valid for all its triteness. An effective coalition of black nationalist groups might be the first step toward a real "Mau Mau" in America, the beginning of a true black revolution.

2. Prevent the rise of a "messiah" who could unify, and electrify, the militant black nationalist movement. Malcolm X might have been such a "Messiah;" he is the martyr of the movement today. Martin Luther King, Stokely Carmichael and Elijah Muhammed all aspire to this position. Elijah Muhammed is less of a threat because of his age. King could be a very real contender for this position should he abandon his supposed "obedience" to "white, liberal doctrines" (nonviolence) and embrace black nationalism. Carmichael has the necessary charisma to be a real threat in this way.

3. Prevent violence on the part of black nationalist groups. This is of primary importance, and is, of course, a goal of our investigative activity; it should also be a goal of the Counterintelligence Program. Through counterintelligence it should be possible to pinpoint potential troublemakers and neutralize them before they exercise their potential for violence.

4. Prevent militant black nationalist groups and leaders from gaining respectability, by discrediting them to three separate segments of the community. The goal of discrediting black nationalists must be handled tactically in three ways. You must discredit these groups and individuals to, first, the responsible Negro community. Second, they must be discredited to the white community,

both the responsible community and to "liberals" who have vestiges of sympathy for militant black nationalist simply because they are Negroes. Third, these groups must be discredited in the eyes of Negro radicals, the followers of the movement. This last area requires entirely different tactics from the first two. Publicity about violent tendencies and radical statements merely enhances black nationalists to the last group; it adds "respectability" in a different way.

5. A final goal should be to prevent the long-range growth of militant black nationalist organizations, especially among youth. Specific tactics to prevent these groups from converting young people must be developed.

Besides these five goals counterintelligence is a valuable part of our regular investigative program as it often produces positive information.

TARGETS

Primary targets of the Counterintelligence Program, Black Nationalist-Hate Groups, should be the most violent and radical groups and their leaders. We should emphasize those leaders and organizations that are nationwide in scope and are most capable of disrupting this country. These targets should include the radical and violence-prone leaders, members, and followers of the:

USA

Student Nonviolent Coordinating Committee (SNCC),
Southern Christian Leadership Conference (SCLC),
Revolutionary Action Movement (RAM),
Nation of Islam (NOI)

Offices handling these cases and those of Stokely Carmichael of SNCC, H. Rap Brown of SNCC, Martin Luther King of SCLC, Maxwell Stanford of RAM, and Elijah Muhammed of NOI, should be alert for counterintelligence suggestions.

INSTRUCTIONS

Within 30 days of the date of this letter each office should:

1. Advise the Bureau of the identity of the Special Agent assigned to coordinate this program.

2. Submit a very succinct summary of the black nationalist movement in the field office territory. Include name, number of members and degree of activity of each black nationalist group. Also state your estimate of each groups propensity for violence. This is for target evaluation only, not for record purposes. Second, list Rabble-Rouser Index subjects who are militant black nationalists and any other militant black nationalist leaders who might be future targets of counterintelligence action because of their propensity for violence. Include a minimum of background information on each person listed; a few descriptive sentences should suffice.

3. List those organizations and individuals you consider of such potential danger as to be considered for current counterintelligence action. Briefly justify each target.

4. Submit any suggestion you have for overall counterintelligence action or the administration of this program. Suggestions for action against any specific target should be submitted by separate letter.

5. Submit, by separate letter, suggestions for counterintelligence action against the targets previously listed as field-wide. These should not be general, such as "publicize Stokely Carmichael's travel to communist countries," but should be specific as to target, what is to be done, what contacts are to be used, and all other information needed for the Bureau to approve a counterintelligence operation.

Thereafter, on a ninety-day basis, each office is to submit a progress letter summarizing counterintelligence operations proposed during the period, operations effected, and tangible results. Any changes in the overall black nationalist movement should be summarized in this letter. This should include new organizations, new leaders, and any changes in data listed under number two above. Suggestions for counterintelligence operations should not be set out in this progress letter. Use the following captions:

1. Operations Under Consideration, 2. Operations Being Effected, 3. Tangible Results, and 4. Developments of Counterintelligence Interest. These 90-day progress letters are due at the Bureau the first day of March, June, September, and December, excepting March, 1968.

Airtel to SAC, Albany
RE: COUNTERINTELLIGENCE PROGRAM
BLACK NATIONALIST-HATE GROUPS

The effectiveness of counterintelligence depends on the quality and quantity of positive information available regarding the target and on the imagination and initiative of Agents working the program. The response of the field to the Counterintelligence Program against the Communist Party, USA, indicates that a superb job can be done by the field on counterintelligence.

Counterintelligence operations must be approved by the Bureau. Because of the nature of this program each operation must be designed to protect the Bureau's interest so that there is no possibility of embarrassment to the Bureau. Beyond this the Bureau will give every possible consideration to your proposals.

Memorandum

: Mr. W. C. Sullivan

DATE: 5/8/68

OM : C. D. Brennan

FILED

JUN 1 1982

JAMES F. DAVEY, Clerk

---- INTELLIGENCE PROGRAM

Make 9 copies of order

Also:

Helen Gurewitz
1112 Quebec St.
Silver Spring,
Md. 20903

dergoing an era of disruption and
extent by various individuals
the New Left. Some of these activists
and call for the defeat of the
They continually and falsely allege
ot hesitate to utilize unlawful acts
d causes. The New Left has on many
currilously attacked the Director
mpt to hamper our investigation of it
ollege campuses. With this in mind,
that a new Counterintelligence Program
the New Left and the Key Activists.
ose individuals who are the moving
lt and on whom we have intensified our

this program is to expose, disrupt and
activities of this group and persons
hoped that with this new program
l activities may be reduced if not

ictions are being furnished to all offic
and administration of this new program.
ions require all offices to submit an
unterintelligence operations on the New
Left and on the key activists on or before 6/1/68, including
any specific recommendations for action. Thereafter, all
offices will submit a 90-day status letter setting forth a
summary of their accomplishments and future plans. Each
office will maintain a pending case and assign experienced

Enclosure

EPG/BAW:jms
(9)
1 - Mr. Felt
1 - Mr. DeLoach
1 - Mr. W. C. Sullivan
1 - [redacted]
1 - [redacted]
1 - [redacted]

MCT-15

REC 25 449698

MAY 21 1968

1 -
1 -

CONTINUED - OVER

Civil Action No. 76-1325
Appendix II-3

DEFENDANT - Plaintiff's Ex

Date _____ Time Start _____ Time Stop _____ Total Time _____

CLIENT/CASE _____ FILE NO. _____

Place Called _____ Phone No. _____

CALL ☐ To _____ Of _____
☐ From

SUBJECT _____

_____

WHAT I SAID _____

_____

_____

_____

WHAT HE (SHE) SAID _____

_____

_____

_____

Amount $ _____

Charge To: _____ TAX $ _____

_____ TOTAL $ _____

Signature _____

LONG DISTANCE CALL RECORD

© 1976,1978 by Law Publications Inc., 1180 South Beverly Drive, Los Angeles, California 90035 To Re-Order Specify Form E-115

Memorandum

: Mr. W. C. Sullivan

DM : C. D. Brennan

DATE: 5/8/68

FILED

JUN 1 1982

JAMES F. DAVEY, Clerk

BJECT: COUNTERINTELLIGENCE PROGRAM
INTERNAL SECURITY
DISRUPTION OF THE NEW LEFT

Our Nation is undergoing an era of disruption and violence caused to a large extent by various individuals generally connected with the New Left. Some of these activists urge revolution in America and call for the defeat of the United States in Vietnam. They continually and falsely allege police brutality and do not hesitate to utilize unlawful acts to further their so-called causes. The New Left has on many occasions viciously and scurrilously attacked the Director and the Bureau in an attempt to hamper our investigation of it and to drive us off the college campuses. With this in mind, it is our recommendation that a new Counterintelligence Program be designed to neutralize the New Left and the Key Activists. The Key Activists are those individuals who are the moving forces behind the New Left and on whom we have intensified our investigations.

The purpose of this program is to expose, disrupt and otherwise neutralize the activities of this group and persons connected with it. It is hoped that with this new program their violent and illegal activities may be reduced if not curtailed.

General instructions are being furnished to all office relating to the purpose and administration of this new program. Briefly, these instructions require all offices to submit an analysis of possible counterintelligence operations on the New Left and on the Key Activists on or before 6/1/68, including any specific recommendations for action. Thereafter, all offices will submit a 90-day status letter setting forth a summary of their accomplishments and future plans. Each office will maintain a pending case and assign experienced

Enclosure

EPG/BAW:jms
(9)

1 - Mr. Felt
1 - Mr. DeLoach
1 - Mr. W. C. Sullivan
1 - [redacted]
1 - [redacted]
1 - [redacted]

449698

MCT-15

REC 25

MAY 21 [illegible]

1 - [redacted]
1 - [redacted]

CONTINUED - OVER

Civil Action No. 76-1325
Appendix II-3
BRENNAN - Plaintiff's Ex

personnel to this program. All proposed counterintelligence action must be approved at the Seat of Government prior to instituting it. This new program will be supervised at the Seat of Government by a Special Agent supervisor in the Internal Security Section.

RECOMMENDATIONS:

1) That the Domestic Intelligence Division be authorized to immediately initiate a coordinated Counter-intelligence Program directed at exposing, disrupting, and otherwise neutralizing the New Left and Key Activists.

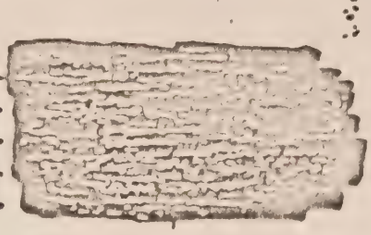
2) That the attached letter setting forth instructions for the administration and immediate enactment of the program be forwarded to all offices.

1 - Mr. Felt
1 - Mr. DeLoach
1 - Mr. W.C. Sullivan

SAC, Albany

Director, FBI 100-449698

REC 25



COUNTERINTELLIGENCE PROGRAM
INTERNAL SECURITY
DISRUPTION OF THE NEW LEFT

Effective immediately, the Bureau is instituting a Counterintelligence Program directed against the New Left movement and its Key Activists. All offices are instructed to immediately open an active control file, captioned as above, and to assign responsibility for this program to an experienced and imaginative Special Agent who is well versed in investigation of the New Left and its membership.

The purpose of this program is to expose, disrupt, and/or otherwise neutralize the activities of the various New Left organizations, their leadership and adherents. It is imperative that the activities of these groups be followed on a continuous basis so we may take advantage of all opportunities for counterintelligence and also inspire action in instances where circumstances warrant. The devious maneuvers and duplicity of these activists must be exposed to public scrutiny through the cooperation of reliable news media sources, both locally and at the seat of Government. We must frustrate every effort of these groups and individuals to consolidate their forces or to recruit new or youthful adherents. In every instance, consideration should be given to disrupting the organized activity of these groups and no opportunity should be missed to capitalize upon organizational and personal conflicts of their leadership.

MAILED 12
MAY 14 1968
COMM-FBI

On or before June 1, 1968, all offices are instructed to submit to the Bureau a detailed analysis of potential counterintelligence action against New Left organizations and Key Activists within their respective territories. Specific recommendations should be included for any logical immediate counterintelligence action. Recommendations submitted under this program must include all necessary facts to enable the Bureau to intelligently pass upon the feasibility of the proposed action. In instances where a reliable and cooperative news media representative or other

62 - All Offices

Letter to Albany
Re: COUNTERINTELLIGENCE PROGRAM

source outside the Bureau is to be contacted or utilized in connection with a proposed counterintelligence operation, it will be incumbent upon the recommending office to furnish assurances the source will not reveal the Bureau's interest or betray our confidence.

Offices which have investigative responsibility for Key Activists should specifically comment in the initial letter to the Bureau regarding these individuals. As these offices are aware, these individuals have been identified as the moving forces behind the New Left.

No counterintelligence action may be initiated by the field without specific Bureau authorization.

Commencing July 1, 1968, and every three months thereafter, each participating office should submit to the Bureau a status letter covering the prior 3-month period, including comments under the following captions.

1) Potential Counterintelligence Action

2) Pending Counterintelligence Action

3) Tangible Results

If necessary, a fourth caption 'Miscellaneous' may be utilized for additional comments.

Recommendations for counterintelligence action should not be included in the 90-day status letters to the Bureau, but should be submitted individually by separate letter.

All Special Agent personnel responsible for the investigation of the New Left and the Key Activists should be alerted to our counterintelligence plans relating to these groups. Counterintelligence action directed at these groups is intended to complement and stimulate our accelerated intelligence investigations. Each investigative Agent has a responsibility to call to the attention of the counterintelligence coordinator suggestions and possibilities for implementing the program. You are cautioned

Library

COUNTERINTELLIGENCE PROGRAM

that the nature of this new endeavor is such that under no circumstances should the existence of the program be made known outside the Bureau and appropriate within-office security should be afforded this sensitive operation.

The Bureau has been very closely following the activities of the New Left and the Key Activists and is highly concerned that the anarchistic activities of a few can paralyze institutions of learning, induction centers, cripple traffic, and tie the arms of law enforcement officials all to the detriment of our society. The organizations and activists who uproot revolution and unlawfully challenge society to obtain their demands must not only be contained, but must be neutralized. Law and order is mandatory for any civilized society to survive. Therefore, you must approach this new endeavor with a forward look, enthusiasm, and interest in order to accomplish our responsibilities. The importance of this new endeavor cannot and will not be overlooked.

NOTE:

See cover memorandum, C.D. Brennan to Mr. W.C. Sullivan, dated 5/8/68, same caption, prepared by EPG/BAW:jms.

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

FPI—MAR—7-14-80-70M-4396

PLAINTIFF	DEFENDANT	76-1326 DOCKET NO.
HOBSON, et al	WILSON, et al	PAGE 47 OF ___ PAGES

DATE 1982	NR.	PROCEEDINGS
Jan 28		MOTION of pltfs for second extension of time in which to oppose defts' post-trial motions; memo in support.
Jan 28		WITHDRAWAL OF J.E. McNeil and Daniel M. Schember as co-counsel for pltfs.
Jan 29		ORDER setting status call 2-3-82 @ 9:30 a.m. (N) OBERDORFER, J.
Jan 29		ORDER directing all counsel to attend status call on 2-3-82. (N) OBERDORFER,J.
Feb 2		OPPOSITION of federal defts to pltfs' motion for second extension of time in which to oppose defts' post-trial motions.
Feb 2		OPPOSITION of D.C. defts to pltfs' second motion for an extension of time to respond to post-trial motions.

Burnet v. New York Central Railroad Co., 380 U.S. 424, 428 (1965).

Donaldson v. O'Connor, 493 F. 2d 507.529 (5th Cir. 1974), vacated and remanded on other grounds sub nor . O'Conner v. Donaldson, 422 U.S. 563 (1975).

Fitzgerald v. Seamans, 553 F. 2d 220 (D.C. Cir. 1977)

STATUTE OF LIMITATIONS

The statute of limitations is a provision of the law which requires a plaintiff to commence a lawsuit within a prescribed period of time. Without such a statute or rule courts would have to try stale cases and defendants would be required to defend claims where through the passage of time memories have failed and evidence has become lost. In this case, the prescribed period is three years.

The acts on which this case is based occured during theperiod 1969 through 1971. Since the injuries for which plaintiffs seek money damages were either known to them when they occurred or were knowable as a matter of human experience, the period in which they were required to commence this lawsuit started on the dates when the defendants committed the various acts which gave rise to the injuries. This suit was filed on July 16, 1976 more than three years after any of the acts were committed and is therefore subject to dismissal unless the plaintiffs can prove by a preponderence of the evidence that the three year period was tolled or suspended until July 16, 1973 or later thereby causing this suit to have been brought timely.

In this regard each plaintiff must prove entitlement to a provision known as the doctrine of fraudulent or deliberate concealment. Stated simply that doctrine suspends the running of the limitations period where the defendants have fraudulently or deliberately concealed facts which would have prescribed a basis for bringing the suit. Accordingly, plaintiffs must establish two elements. First, each must show that defendants successfully concealed facts that if known by the plaintiff,

Burnet v. New York Central Railroad Co., 380 U.S. 424, 428 (1965).

Donaldson v. O'Connor, 493 F. 2d 507.529 (5th Cir. 1974), vacated and remanded on other grounds sub nor . O'Conner v. Donaldson, 422 U.S. 563 (1975).

Fitzgerald v. Seamans, 553 F. 2d 220 (D.C. Cir. 1977)

would have been sufficient to put him on notice that he or she had a legal claim or potential legal claim. To have a legal claim or potential legal claim, knowledge of all the facts is not required. All that is required is that the plaintiff have sufficient information to alert him that his rights have been invaded. The second element required is that the defendant concealed such facts through fraudulent or deliberate means.

Plaintiff has the burden of establishing that despite his best efforts and due diligence the facts were so successfully concealed that he or she could not have learned the basis of the claim orgained sufficient information which would alert him or her that further investigation might reveal the basis of a claim. With regard to the Metropolitan Police Department defendants, such information would be that which indicated or suggested that they had obtained information about him or her through surveillance or took action to interfere with his or her rights of speech or association. You should consider evidence of plaintiff's suspicious at the time, information which was personally shared prior to July 16, 1973 or the information which was available through the press.

If you find that each plaintiff has established his or her burden that he or she neither knew nor through the exercise of due diligence could have known prior to July 16, 1973 that he or she had a potential claim against one or more employees of the Metropolitan Police Department then you may find the information comprising the basis of the suit was successfully concealed from him or her. You should also note that the personal identity of the potential defendant as opposed to the fact that he or she was employed by the Metropolitan Police Department is not an essential item

Fitzgerald v. Seamans, supra

Bivens v. Six Unknown Agents of the Federal Bureau of Investigation, 403 U.S. 388 (1971)

of information for purposes of filing a suit. If you find that the plaintiff knew or should have known that there was the basis of a lawsuit, then you must find that the basis of the lawsuit was not successfully concealed.

If you find that concealment did occur, you must then determine whether fraudulent means were used to conceal the facts giving rise to the lawsuit.

A person may be found to have fraudulently concealed fact or facts where he suppress or hides something which he has the duty to disclose or engages in a deliberate and affirmative act to prevent disclosure. A duty to disclose can arise from a contract between the parties, by legislative enactment or through the existence of a fiduciary relationship between the parties such as doctor and patient a lawyer and client. Absent a duty to disclose, mere silence by the defendant does not constitute fraudulent concealment. If you find that defendants fraudulently concealed facts but that such concealment occurred more than three years after the act which caused injury to plaintiff, his or her claim can not be maintained and you must return a verdict for the defendant.

If you find that the defendants concealed their action from the plaintiff but that the evidence established that such concealment was nothing more than the maintenance of the confidentiality of information in MPD. files as an aspect of their employment, then you are instructed that such concealment was not fraudulent.

Smith v. Nixon, 606 F. 2d 1183 (D.C. Cir. 1979)

General Aircraft Corp. v. Air America, Inc. 482 F. Supp. 3 (D.D.C. 1979)

If you find that each plaintiff has established by a preponderance of the evidence that until July 16, 1973, or later, the defendants successfully concealed the basis of his or her claim and that such concealment was unrelated to the duties and/or responsibilities of their employment, then you may find that such concealment was fraudulent. Upon such a finding you should find that the plaintiff has met his burden for suspending the running of the statute of limitations and that the suit was timely commenced.

The District of Columbia defendants hereby adopt and request this Court to give the Qualified Immunity Defense as stated by the Federal Defendants. In addition, the District of Columbia defendants request Standardized Jury Instruction 16-1 (Punitive Damages).

JUDITH W. ROGERS (by GNB)
JUDITH W. ROGERS,
Corporation Counsel, D. C.

JOHN H. SUDA (by GNB)
JOHN H. SUDA,
Deputy Corporation Counsel, D. C.

Laura W. Bonn (by GNB)
LAURA W. BONN [951327]
Assistant Corporation Counsel, D. C.

George N. Barclay
George N. Barclay [248849]
Assistant Corporation Counsel, D. C.
Attorneys for Defendant, District of Columbia
District Building
Washington, D. C. 20004
727-6303

Preferred
Ltf's. good faith
instruction submitted

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. _____

(General instruction on good faith or qualified immunity defense)

The defendants claim that they cannot be held liable because they acted in good faith and with the belief that their actions were lawful. In detemining whether to accept or reject this defense, you must decide whether, given all the evidence, defendants could have held, in good faith, the sincere and reasonable belief that their actions were lawful. Many factors determine good faith and what, under these circumstances, would constitute a reasonable belief on the part of a defendant that he or she was acting lawfully. Among these factors are the nature of the activities engaged in by plaintiffs in the exercise of their First Amendment rights, the state of the law as to those rights at the time defendants were engaged in the challenged activities, and, finally, the nature of those activities themselves.

You are instructed, however, that a defendant cannot be found to have acted in good faith and with a reasonable belief that his or her activity was lawful if that defendant committed any act that he knew or reasonably should have known would violate a plaintiff's constitutional rights. The defendants either knew or should have known that the activities of the plaintiffs described by the evidence in this case were protected by the First Amendment and that it was then clearly established that these activities were so protected. The defendants also knew or should have known that to enter someone's premises and take material without a court order was a violation of Fourth Amendment rights and those rights were clearly established.

You are further instructed that a defendant cannot be found to have acted in good faith and with a reasonable belief that his or her activity was lawful if you determine that the defendant acted either with malicious intention, or in ignorance

of or with actual disregard for settled, indisputable law.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Bivens v. Six Unknown Named Agents, 456 F.2d 1339 (2d Cir. 1972).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. _____

(General instruction on good faith or qualified immunity defense)

The defendants claim that they cannot be held liable because they acted in good faith and with the belief that their actions were lawful. In detemining whether to accept or reject this defense, you must decide whether, given all the evidence, defendants could have held, in good faith, the sincere and reasonable belief that their actions were lawful. Many factors determine good faith and what, under these circumstances, would constitute a reasonable belief on the part of a defendant that he or she was acting lawfully. Among these factors are the nature of the activities engaged in by plaintiffs in the exercise of their First Amendment rights, the state of the law as to those rights at the time defendants were engaged in the challenged activities, and, finally, the nature of those activities themselves.

You are instructed, however, that a defendant cannot be found to have acted in good faith and with a reasonable belief that his or her activity was lawful if that defendant committed any act that he knew or reasonably should have known would violate a plaintiff's constitutional rights. The defendants either knew or should have known that the activities of the plaintiffs described by the evidence in this case were protected by the First Amendment and that it was then clearly established that these activities were so protected. The defendants also knew or should have known that to enter someone's premises and take material without a court order was a violation of Fourth Amendment rights and those rights were clearly established.

You are further instructed that a defendant cannot be found to have acted in good faith and with a reasonable belief that his or her activity was lawful if you determine that the defendant acted either with malicious intention, or in ignorance

of or with actual disregard for settled, indisputable law.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Bivens v. Six Unknown Named Agents, 456 F.2d 1339 (2d Cir. 1972).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. _____

(General instruction on good faith or qualified immunity defense)

The defendants claim that they cannot be held liable because they acted in good faith and with the belief that their actions were lawful. In detemining whether to accept or reject this defense, you must decide whether, given all the evidence, defendants could have held, in good faith, the sincere and reasonable belief that their actions were lawful. Many factors determine good faith and what, under these circumstances, would constitute a reasonable belief on the part of a defendant that he or she was acting lawfully. Among these factors are the nature of the activities engaged in by plaintiffs in the exercise of their First Amendment rights, the state of the law as to those rights at the time defendants were engaged in the challenged activities, and, finally, the nature of those activities themselves.

You are instructed, however, that a defendant cannot be found to have acted in good faith and with a reasonable belief that his or her activity was lawful if that defendant committed any act that he knew or reasonably should have known would violate a plaintiff's constitutional rights. The defendants either knew or should have known that the activities of the plaintiffs described by the evidence in this case were protected by the First Amendment and that it was then clearly established that these activities were so protected. The defendants also knew or should have known that to enter someone's premises and take material without a court order was a violation of Fourth Amendment rights and those rights were clearly established.

You are further instructed that a defendant cannot be found to have acted in good faith and with a reasonable belief that his or her activity was lawful if you determine that the defendant acted either with malicious intention, or in ignorance

of or with actual disregard for settled, indisputable law.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Bivens v. Six Unknown Named Agents, 456 F.2d 1339 (2d Cir. 1972).

PLAINTIFFS' PROPOSED JURY INSTRUCTION NO. _____

(General instruction on good faith or qualified immunity defense)

The defendants claim that they cannot be held liable because they acted in good faith and with the belief that their actions were lawful. In detemining whether to accept or reject this defense, you must decide whether, given all the evidence, defendants could have held, in good faith, the sincere and reasonable belief that their actions were lawful. Many factors determine good faith and what, under these circumstances, would constitute a reasonable belief on the part of a defendant that he or she was acting lawfully. Among these factors are the nature of the activities engaged in by plaintiffs in the exercise of their First Amendment rights, the state of the law as to those rights at the time defendants were engaged in the challenged activities, and, finally, the nature of those activities themselves.

You are instructed, however, that a defendant cannot be found to have acted in good faith and with a reasonable belief that his or her activity was lawful if that defendant committed any act that he knew or reasonably should have known would violate a plaintiff's constitutional rights. The defendants either knew or should have known that the activities of the plaintiffs described by the evidence in this case were protected by the First Amendment and that it was then clearly established that these activities were so protected. The defendants also knew or should have known that to enter someone's premises and take material without a court order was a violation of Fourth Amendment rights and those rights were clearly established.

You are further instructed that a defendant cannot be found to have acted in good faith and with a reasonable belief that his or her activity was lawful if you determine that the defendant acted either with malicious intention, or in ignorance

of or with actual disregard for settled, indisputable law.

Authority: Wood v. Strickland, 420 U.S. 308 (1975); Bivens v. Six Unknown Named Agents, 456 F.2d 1339 (2d Cir. 1972).

DC instruction

STATUTE OF LIMITATIONS

The statute of limitations is a provision of the law which requires a plaintiff to commence a lawsuit within a prescribed period of time. Without such a statute or rule courts would have to try stale cases and defendants would be required to defend claims where through the passage of time memories have failed and evidence has become lost. In this case, the prescribed period is three years.

The acts on which this case is based occured during theperiod 1969 through 1971. Since the injuries for which plaintiffs seek money damages were either known to them when they occurred or were knowable as a matter of human experience, the period in which they were required to commence this lawsuit started on the dates when the defendants committed the various acts which gave rise to the injuries. This suit was filed on July 16, 1976 more than three years after any of the acts were committed and is therefore subject to dismissal unless the plaintiffs can prove by a preponderence of the evidence that the three year period was tolled or suspended until July 16, 1973 or later thereby causing this suit to have been brought timely.

In this regard each plaintiff must prove entitlement to a provision known as the doctrine of fraudulent or deliberate concealment. Stated simply that doctrine suspends the running of the limitations period where the defendants have fraudulently or deliberately concealed facts which would have prescribed a basis for bringing the suit. Accordingly, plaintiffs must establish two elements. First, each must show that defendants successfully concealed facts that if known by the plaintiff,

Burnet v. New York Central Railroad Co., 380 U.S. 424, 428 (1965).

Donaldson v. O'Connor, 493 F. 2d 507.529 (5th Cir. 1974), vacated and remanded on other grounds sub nor . O'Conner v. Donaldson, 422 U.S. 563 (1975).

Fitzgerald v. Seamans, 553 F. 2d 220 (D.C. Cir. 1977)

would have been sufficient to put him on notice that he or she had a legal claim or potential legal claim. To have a legal claim or potential legal claim, knowledge of all the facts is not required. All that is required is that the plaintiff have sufficient information to alert him that his rights have been invaded. The second element required is that the defendant concealed such facts through fraudulent or deliberate means.

Plaintiff has the burden of establishing that despite his best efforts and due diligence the facts were so successfully concealed that he or she could not have learned the basis of the claim or gained sufficient information which would alert him or her that further investigation might reveal the basis of a claim. With regard to the Metropolitan Police Department defendants, such information would be that which indicated or suggested that they had obtained information about him or her through surveillance or took action to interfere with his or her rights of speech or association. You should consider evidence of plaintiff's suspicious at the time, information which was personally shared prior to July 16, 1973 or the information which was available through the press.

If you find that each plaintiff has established his or her burden that he or she neither knew nor through the exercise of due diligence could have known prior to July 16, 1973 that he or she had a potential claim against one or more employees of the Metropolitan Police Department then you may find the information comprising the basis of the suit was successfully concealed from him or her. You should also note that the personal identity of the potential defendant as opposed to the fact that he or she was employed by the Metropolitan Police Department is not an essential item

Fitzgerald v. Seamans, supra

Bivens v. Six Unknown Agents of the Federal Bureau of Investigation, 403 U.S. 388 (1971)

of information for purposes of filing a suit. If you find that the plaintiff knew or should have known that there was the basis of a lawsuit, then you must find that the basis of the lawsuit was not successfully concealed.

If you find that concealment did occur, you must then determine whether fraudulent means were used to conceal the facts giving rise to the lawsuit.

A person may be found to have fraudulently concealed fact or facts where he suppress or hides something which he has the duty to disclose or engages in a deliberate and affirmative act to prevent disclosure. A duty to disclose can arise from a contract between the parties, by legislative enactment or through the existence of a fiduciary relationship between the parties such as doctor and patient a lawyer and client. Absent a duty to disclose, mere silence by the defendant does not constitute fraudulent concealment. If you find that defendants fraudulently concealed facts but that such concealment occurred more than three years after the act which caused injury to plaintiff, his or her claim can not be maintained and you must return a verdict for the defendant.

If you find that the defendants concealed their action from the plaintiff but that the evidence established that such concealment was nothing more than the maintenance of the confidentiality of information in MPD. files as an aspect of their employment, then you are instructed that such concealment was not fraudulent.

Smith v. Nixon, 606 F. 2d 1183 (D.C. Cir. 1979)

General Aircraft Corp. v. Air America, Inc. 482 F. Supp. 3 (D.D.C. 1979)

If you find that each plaintiff has established by a preponderance of the evidence that until July 16, 1973, or later, the defendants successfully concealed the basis of his or her claim and that such concealment was unrelated to the duties and/or responsibilities of their employment, then you may find that such concealment was fraudulent. Upon such a finding you should find that the plaintiff has met his burden for suspending the running of the statute of limitations and that the suit was timely commenced.

The District of Columbia defendants hereby adopt and request this Court to give the Qualified Immunity Defense as stated by the Federal Defendants. In addition, the District of Columbia defendants request Standardized Jury Instruction 16-1 (Punitive Damages).

JUDITH W. ROGERS (by GNB)
JUDITH W. ROGERS,
Corporation Counsel, D. C.

JOHN H. SUDA (by GNB)
JOHN H. SUDA,
Deputy Corporation Counsel, D. C.

Laura W. Bonn (by GNB)
LAURA W. BONN [951327]
Assistant Corporation Counsel, D. C.

George N. Barclay
George N. Barclay [248849]
Assistant Corporation Counsel, D. C.
Attorneys for Defendant, District of Columbia
District Building
Washington, D. C. 20004
727-6303

SUMMARY OF CLAIMS AND DEFENSES

THE PLAINTIFFS HERE CLAIM THAT THE DEFENDANTS INJURED RIGHTS GUARANTEED TO THE PLAINTIFFS BY THE FIRST AMENDMENT OF THE CONSTITUTION TO EXPRESS FREELY THEIR VIEWS AND ATTITUDES AND DEBATE PUBLICLY ISSUES AND TO ASSEMBLE PUBLICLY AND TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES. THESE ARE AMONG OUR SO-CALLED FIRST AMENDMENT RIGHTS ALONG WITH THE FREEDOM OF THE PRESS AND FREEDOM OF RELIGION. THE GOVERNMENT AND PEOPLE WORKING FOR THE GOVERNMENT MAY NOT INTERFERE WITH THESE RIGHTS EXCEPT UNDER CERTAIN LIMITED CONDITIONS. AND IN CERTAIN LIMITED WAYS

THEREFORE, THE QUESTIONS BEFORE YOU BASICALLY ARE WHETHER THE DEFENDANTS ACTING INDIVIDUALLY OR AS ALLEGED CO-CONSPIRATORS, A TERM THAT I WILL EXPLAIN, INJURED A PLAINTIFF BY PREVENTING THAT PLAINTIFF FROM EXERCISING, OR IMPEDING THAT PLAINTIFF IN THE EXERCISE, OF RIGHTS GUARANTEED BY THE FIRST AMENDMENT TO ASSEMBLE AT A PARTICULAR TIME AND PLACE OR TO ASSOCIATE WITH ONE OR MORE OTHER ~~PARTICULAR~~ PERSONS. to engage in political assn + engage in pol. activity

AS I HAVE STATED, PEOPLE WORKING FOR THE GOVERNMENT MAY LAWFULLY INTERFERE WITH SPEECHES, ASSEMBLIES, AND ASSOCIATIONS THAT HAVE POLITICAL PURPOSES IN CERTAIN LIMITED CIRCUMSTANCES. FOR EXAMPLE, GOVERNMENT OFFICIALS HAVE A DUTY TO PREVENT DOMESTIC VIOLENCE TO PERSONS AND PROPERTY, TO PREVENT INTERRUPTION OF ORDERLY ACTIVITIES (SUCH AS TRAFFIC), TO PROTECT THE NATION FROM

FOREIGN ENEMIES, AND TO INVESTIGATE AND PREVENT CRIMINAL ACTIVITIES. DEFENDANTS CLAIM THAT IF THEY COMMITTED THE ACTS ABOUT WHICH PLAINTIFFS COMPLAIN, THEY DID SO FOR THOSE PURPOSES. IT IS NECESSARY FOR YOU TO DECIDE, THEREFORE, WHETHER A REASONABLE PERSON IN A DEFENDANT'S SITUATION COULD BELIEVE THAT HIS CONDUCT WOULD NOT IMPEDE A PLAINTIFF'S EXERCISE OF FIRST AMENDMENT RIGHTS, OR THAT, IN SO IMPEDING, HE WAS NEVERTHELESS ACTING WITH A REASONABLE GOOD-FAITH BELIEF THAT HIS CONDUCT WAS LAWFUL.

FINALLY, IF YOU FIND THAT A DEFENDANT'S CONDUCT INJURED A PLAINTIFF'S FIRST AMENDMENT RIGHTS AND THAT CONDUCT WAS NOT JUSTIFIED, YOU MUST PROCEED TO DETERMINE WHETHER THAT DEFENDANT OR A CONSPIRACY TO WHICH HE BELONGED DELIBERATELY CONCEALED FROM THAT PLAINTIFF KNOWLEDGE OF IMPORTANT FACTS ABOUT HIS CASE IN SUCH A WAY THAT THE PLAINTIFF COULD NOT HAVE DISCOVERED BY THE EXERCISE OF DUE DILIGENCE ENOUGH FACTS TO FILE A SUIT IN COURT IN THE TIME ALLOWED BY THE STATUTE OF LIMITATIONS FOR THE FILING OF SUCH A SUIT.

DEFINITION OF ASSOCIATION OR ASSEMBLY

THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES GUARANTEES FROM UNREASONABLE INTERFERENCE BY ANY GOVERNMENT OFFICIAL "FREEDOM OF SPEECH" AND "THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES."

THE RIGHT TO SPEAK AND TO ASSEMBLE FOR THAT PURPOSE INCLUDES THE RIGHT TO JOIN WITH OR AND TO HAVE OTHERS JOIN AND ASSOCIATE WITH THEM ASSOCIATE WITH OTHERS FOR THE PURPOSE OF POLITICAL EXPRESSION.

last sure

WHEN I USE THE TERMS "ASSOCIATE" AND "ASSEMBLE," I REFER TO THE ACT OR ACTS OF ASSOCIATION IN SUPPORT OF A POLITICAL CAUSE, SUCH AS PARTICIPATION IN A PARTICULAR DEMONSTRATION, OR CONTRIBUTING TIME OR MONEY TO AN ORGANIZATION ADVOCATING A CAUSE ADVOCATED BY A PLAINTIFF, OR SIGNING A PETITION OR LETTER IN SUPPORT OF THAT CAUSE.

DEFINITION OF IMPEDING

WHEN I SPEAK OF IMPEDING ASSOCIATION OR ASSEMBLY, I INCLUDE IMPEDING ANOTHER PERSON FROM ASSEMBLING OR ASSOCIATING WITH PLAINTIFF OR WITH AN ORGANIZATION TO WHICH THAT PLAINTIFF BELONGED. IMPEDING MEANS MAKING SUBSTANTIALLY MORE ~~DIFFICULT~~ burdensome. ACTS OF A DEFENDANT HAVE IMPEDED ASSOCIATION OR ASSEMBLY IF THOSE ACTS HAVE MADE THAT ASSOCIATION OR ASSEMBLY SUBSTANTIALLY MORE ~~DIFFICULT~~ burdensome THAN IT WOULD HAVE BEEN IF THE ACT OR ACTS OF A CONSPIRACY TO WHICH THE DEFENDANT BELONGED HAD NOT BEEN COMMITTED.

d is active

2a

CONSPIRACIES ALLEGED

PLAINTIFFS CLAIM THAT THERE WERE THREE CONSPIRACIES IN WHICH THE DEFENDANTS PARTICIPATED. ONE WAS A CONSSPIRACY AMONG THE FBI DEFENDANTS; ANOTHER WAS A CONSPIRACY AMONG THE DEFENDANTS WHO WERE MEMBERS OF THE METROPOLITAN POLICE DEPARTMENT; AND A THIRD WAS A CONSPIRACY THAT INCLUDED MEMBERS OF BOTH THE FBI AND THE METROPOLITAN POLICE DEPARTMENT.

ON THE VERDICT FORMS THAT WILL BE FURNISHED YOU, YOU WILL ~~THEREAFTER~~ FIND SPACES TO INDICATE A VERDICT AS TO EACH CONSPIRACY ALLEGED: ONE PLACE FOR THE FBI CONSPIRACY ALLEGED, ONE FOR THE METROPOLITAN POLICE DEPARTMENT CONSPIRACY ALLEGED, AND ONE FOR THE ALLEGED CONSPIRACY THAT INCLUDED MEMBERS OF BOTH THE FBI AND THE METROPOLITAN POLICE DEPARTMENT. AS TO PROOF OF LIABILITY ON ANY OF THESE CLAIMS OF CONSPIRACY, THE PLAINTIFF HAS THE BURDENS OF PROOF UPON WHICH I HAVE ALREADY INSTRUCTED YOU. YOUR VERDICTS MUST BE FOUND, OF COURSE, IN ACCORDANCE WITH THOSE INSTRUCTIONS. YOUR VERDICTS SHOULD BE ENTERED ON THE FORMS IN THE SPACES PROVIDED.

IMMUNITY

ALL OF THE INDIVIDUAL DEFENDANTS IN THIS LAWSUIT WERE, AT THE TIME WHEN THE PLAINTIFFS CLAIM THEY INJURED THE PLAINTIFFS, EMPLOYEES OF THE METROPOLITAN POLICE DEPARTMENT OR THE FEDERAL BUREAU OF INVESTIGATION. UNDER THE LAW, A PUBLIC SERVANT IS NOT LIABLE FOR PAYMENT OF MONEY DAMAGES BECAUSE HE VIOLATED FIRST AMENDMENT RIGHTS AND INJURED A PERSON IF HIS CONDUCT CAUSING THE INJURY OCCURRED IN THE COURSE OF HIS PUBLIC EMPLOYMENT, IF HE WAS ACTING AT THE TIME WITH A GOOD-FAITH BELIEF THAT HIS CONDUCT WAS LAWFUL, AND IF UNDER THE CIRCUMSTANCES THAT GOOD-FAITH BELIEF WAS REASONABLE.

INDIVIDUAL LIABILITY

IN ADDITION TO THE CONSPIRACIES ~~S~~ CLAIMS, PARTICULAR PLAINTIFFS CLAIM THAT INDIVIDUAL DEFENDANTS ARE LIABLE TO ONE OR MORE PLAINTIFFS BECAUSE SOME CONDUCT OF THAT INDIVIDUAL DEFENDANT VIOLATED THAT PLAINTIFF'S FIRST AMENDMENT RIGHT TO ASSEMBLE OR ASSOCIATE, SO AS PROXIMATELY TO CAUSE INJURY TO THAT PLAINTIFF. IF YOU FIND THAT NO PLAINTIFF HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE CONDUCT OF AN INDIVIDUAL DEFENDANT VIOLATED ANY PLAINTIFF'S FIRST AMENDMENT RIGHT TO SPEAK, ASSEMBLE, PETITION, OR ASSOCIATE SO AS PROXIMATELY TO CAUSE INJURY TO ANY PLAINTIFF, YOU SHOULD RETURN A VERDICT FOR THAT DEFENDANT ON THE ISSUE OF INDIVIDUAL LIABILITY. IF ONE OR MORE PLAINTIFFS HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT SOME CONDUCT OF AN INDIVIDUAL DEFENDANT PROXIMATELY CAUSED INJURY TO ONE OR MORE PLAINTIFFS IN THE MANNER STATED, YOU SHOULD RETURN A VERDICT FOR THAT PLAINTIFF OR THOSE PLAINTIFFS AGAINST THAT DEFENDANT.

IT IS NOT NECESSARY TO FIND THAT ~~THE~~ A DEFENDANT~~S~~ HAD ANY SPECIFIC INTENT TO DEPRIVE THE PLAINTIFFS OF THEIR CONSTITUTIONAL RIGHTS IN ORDER TO FIND IN FAVOR OF THE PLAINTIFFS ON THE INDIVIDUAL LIABILITY ISSUE, THE PLAINTIFFS ARE ENTITLED TO RELIEF IF THE DEFENDANT INTENDED THE ACTIONS WHICH RESULTED IN A VIOLATION OF THE PLAINTIFFS' RIGHTS.

AS I WILL INSTRUCT YOU FURTHER, HOWEVER, YOU MAY FIND THE INDIVIDUAL DEFENDANT IMMUNE FROM LIABILITY IF HE ACTED WITHIN THE GENERAL SCOPE OF HIS OFFICIAL-DUTIES XXXXXX WITH A REASONABLE AND GOOD-FAITH BELIEF THAT HIS CONDUCT WAS LAWFUL AND JUSTIFIED BY HIS LAW-ENFORCEMENT RESPONSIBILITIES.

DISTRICT OF COLUMBIA --
LIABILITY FOR ACTS OF EMPLOYEES

AS YOU KNOW, THE DISTRICT OF COLUMBIA IS ALSO A DEFENDANT IN THIS ACTION. WHEN AN EMPLOYEE OF THE DISTRICT OF COLUMBIA TAKES ACTION ~~IN~~ TO CARRY OUT ~~EXECUTION OF~~ THE DISTRICT'S (LAWS) POLICIES OR CUSTOMS, WHETHER THOSE POLICIES OR CUSTOMS ARE MADE BY ITS LAWMAKERS OR SIMPLY ARE POLICIES THAT ARE GENERALLY ENFORCED BY DISTRICT EMPLOYEES IN THE COMMUNITY WITH THE IMPLICIT APPROVAL OF THE DISTRICT GOVERNMENT, THAT EMPLOYEE ACTS ON BEHALF OF THE DISTRICT OF COLUMBIA. IF A PLAINTIFF PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT ONE OR MORE OF THE DEFENDANTS PROXIMATELY CAUSED INJURY TO THAT PLAINTIFF WHILE ACTING ON BEHALF OF THE DISTRICT OF COLUMBIA IN THE MANNER I HAVE DESCRIBED, THE DISTRICT OF COLUMBIA IS LIABLE FOR THE INJURIES SO CAUSED. ON THE OTHER HAND, IF A PLAINTIFF FAILS TO PROVE THAT CONDUCT OF A DISTRICT OF COLUMBIA EMPLOYEE PROXIMATELY CAUSING THAT PLAINTIFF'S INJURY WAS TAKEN IN EXECUTION OF THE DISTRICT'S (LAWS) POLICIES OR CUSTOMS, THE DISTRICT OF COLUMBIA IS NOT LIABLE FOR THAT EMPLOYEE'S CONDUCT.

IMMUNITY - OPERATIVE

IF YOU FIND THAT A PARTICULAR DEFENDANT HAS INJURED A PLAINTIFF OR BELONGED TO A CONSPIRACY THAT DID SO, IN VIOLATION OF THE FIRST AMENDMENT, YOU SHOULD PROCEED TO CONSIDER WHETHER THE DEFENDANT IS NEVERTHELESS IMMUNE FROM LIABILITY FOR DAMAGES.

A ~~PUBLIC OFFICIAL~~ IS ENTITLED TO IMMUNITY FROM LIABILITY FOR ACTS PERFORMED IN THE REGULAR COURSE OF DUTY IF THE ~~OFFICIAL~~ PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT SINCERELY AND REASONABLY BELIEVED HE WAS ACTING LAWFULLY AND WITHIN HIS SPHERE OF OFFICIAL RESPONSIBILITY.

PROOF THAT A DEFENDANT IS ENTITLED TO IMMUNITY AS TO ONE INJURY HE HAS CAUSED IS NOT IN ITSELF PROOF OF AN ENTITLEMENT TO IMMUNITY AS TO ANOTHER. A DEFENDANT MUST PROVE THAT HE IS ENTITLED TO IMMUNITY AS TO A PARTICULAR CLAIM FOR WHICH HE ASSERTS IMMUNITY, OR HE IS NOT ENTITLED TO IMMUNITY AS TO THAT CLAIM.

TO BE ENTITLED TO IMMUNITY AS TO A PARTICULAR CLAIM, A DEFENDANT MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE CONDUCT FOR WHICH HE WOULD OTHERWISE BE HELD LIABLE, EITHER AS A CONSPIRATOR OR AS AN INDIVIDUAL RESPONSIBLE ONLY FOR HIS OWN ACTS, WAS IN GOOD FAITH ACTUALLY BELIEVED BY THAT DEFENDANT TO BE AUTHORIZED BY LAW. A DEFENDANT MUST ALSO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HIS BELIEF THAT

HIS ACTION WAS AUTHORIZED BY LAW WAS REASONABLE UNDER THE CIRCUMSTANCES. IN DETERMINING WHETHER A DEFENDANT REASONABLY BELIEVED THAT HIS CONDUCT WAS LAWFUL, YOU SHOULD TAKE INTO ACCOUNT THE EXPERIENCE, TRAINING AND RANK OF THE DEFENDANT WITHIN THE METROPOLITAN POLICE DEPARTMENT OR THE FEDERAL BUREAU OF INVESTIGATION. YOU ARE ALSO INSTRUCTED THAT A DEFENDANT IS ENTITLED, IN THE COURSE OF HIS OFFICIAL DUTIES, TO RELY ON SUCH TRADITIONAL SOURCES OF INFORMATION AS WOULD A REASONABLE PERSON UNDER THE CIRCUMSTANCES. IF YOU FIND THAT A DEFENDANT HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT HIS BELIEF IN THE LAWFULNESS OF HIS CONDUCT, EVEN THOUGH ERRONEOUS IN HINDSIGHT, WAS IN GOOD FAITH, AND WAS SUCH A BELIEF AS A REASONABLY PRUDENT AND CONSCIENTIOUS OFFICER MIGHT POSSESS UNDER THE CIRCUMSTANCES THAT CONFRONTED THE DEFENDANT, YOU SHOULD ENTER A VERDICT FOR THAT DEFENDANT ON THAT CLAIM. WHILE A PUBLIC OFFICER IS NOT CHARGED WITH PREDICTING FUTURE DEVELOPMENTS IN THE LAW OF THE FIRST AMENDMENT, HIS CONDUCT MAY NOT BE JUSTIFIED BY IGNORANCE OR DISREGARD OF SETTLED, INDISPUTABLE RULES THAT HE SHOULD HAVE REASONABLY SO RECOGNIZED AT THE TIME OF HIS INJURIOUS CONDUCT.

YOU ARE INSTRUCTED THAT PLAINTIFF'S RIGHT PEACEABLY TO ASSEMBLE, TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES, AND TO ASSOCIATE FOR THOSE PURPOSES, WAS CLEARLY ESTABLISHED AT ALL TIMES RELEVANT TO THIS CASE.

FEDERAL DEFENDANTS CLAIM THAT THEIR INTELLIGENCE GATHERING ACTIVITIES WERE REQUIRED AND JUSTIFIED IN DISCHARGE OF THEIR DUTIES TO MAINTAIN SURVEILLANCE OVER FOREIGN ENEMIES OF THE UNITED STATES AND THEIR AGENTS HERE and anticipating dom. violence. NO DEFENDANT CLAIMS THAT LEGITIMATE LAW ENFORCEMENT DUTIES WITH RESPECT TO FOREIGN AGENTS JUSTIFIED DISRUPTION OR DISCREDITING OF PLAINTIFFS OR THE ORGANIZATIONS WITH WHICH THEY ASSOCIATED. DEFENDANTS DO CLAIM THAT ALL OF THEIR ACTIVITIES WERE JUSTIFIED BY THEIR DUTY TO ANTICIPATE AND PREVENT DOMESTIC VIOLENCE. PLAINTIFFS, OF COURSE, DISPUTE THE REASONABLENESS OF THIS CLAIM of immunity.

IT IS THE LAW THAT, WHEN USED IN GOOD FAITH, INVESTIGATIVE TECHNIQUES SUCH AS PHYSICAL SURVEILLANCE, THE GATHERING OF INFORMATION ABOUT PRIVATE CITIZENS THROUGH INTERVIEWS, ~~AND THE JUDICIAL PROCESS,~~ AND THE COLLECTION OF INFORMATION FROM INFORMANTS AND UNDERCOVER POLICE OFFICERS, ARE ALL PROPER POLICE ACTIVITIES THAT VIOLATE NO CONSTITUTIONAL RIGHTS OF THE PERSONS WHO ARE THE SUBJECTS OF THE GOVERNMENT'S INTEREST. HOWEVER, IT IS ALSO TRUE THAT INVESTIGATORY TECHNIQUES ARE SOMETIMES ABUSED BY PUBLIC OFFICERS AND MISUSED BY THEM TO OPPRESS CITIZENS AND GROUPS, RATHER THAN TO FURTHER PROPER LAW-ENFORCEMENT GOALS. SUCH AN ABUSE OF LAW-ENFORCEMENT POWER MAY CONSTITUTE AN ABRIDGMENT OF RIGHTS GUARANTEED TO EVERYONE BY THE FIRST AMENDMENT. FOR SUCH AN ABUSE, THE COURTS PROVIDE A REMEDY WHEREBY PERSONS INJURED IN THE EXERCISE OF THEIR FIRST AMENDMENT RIGHTS MAY, IF THE FACTS SO ENTITLE THEM, RECOVER DAMAGES AGAINST THOSE OFFICIALS AND PUBLIC ENTITIES THAT HAVE ACTED IMPROPERLY.

IF YOU FIND THAT A DEFENDANT REASONABLY BELIEVED IN GOOD FAITH THAT THE CONDUCT FOR WHICH HE HAS BEEN FOUND RESPONSIBLE (ON THE CLAIM OF A PARTICULAR PLAINTIFF) WAS NOT OF THE SORT WHICH WOULD VIOLATE THAT PLAINTIFF'S RIGHT TO ASSEMBLE, PETITION, OR ASSOCIATE OR THAT SUCH CONDUCT WAS JUSTIFIED AS A LAWFUL EXERCISE OF HIS LAW ENFORCEMENT RESPONSIBILITIES, YOU SHOULD RETURN A VERDICT FOR THAT DEFENDANT ON THAT CLAIM OF THAT PLAINTIFF. IF, HOWEVER, YOU FIND THAT A DEFENDANT HAS NOT PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT HE REASONABLY AND IN GOOD FAITH BELIEVED THAT THE CONDUCT FOR WHICH HE WOULD OTHERWISE BE HELD LIABLE WAS A LAWFUL EXERCISE OF HIS LAW-ENFORCEMENT RESPONSIBILITIES, THAT DEFENDANT IS NOT ENTITLED TO IMMUNITY. AS TO ANY CLAIM THAT A PLAINTIFF HAS PROVEN IN THE MANNER I HAVE DESCRIBED, AND FOR

DAMAGES

SHOULD YOU FIND THAT A PLAINTIFF HAS PROVEN A PARTICULAR CLAIM IN THE MANNER I HAVE ALREADY DESCRIBED, THAT A DEFENDANT RESPONSIBLE FOR THE INJURY IS NOT ENTITLED TO IMMUNITY FROM LIABILITY IN DAMAGES, AND THAT THE CLAIM IS NOT BARRED BY THE STATUTE OF LIMITATIONS, YOU MUST PROCEED TO FIX THE AMOUNT OF DAMAGES, IF ANY, REQUIRED FAIRLY AND REASONABLY TO COMPENSATE THE PLAINTIFF FOR THE INJURY SUFFERED BY THAT PLAINTIFF AS A RESULT OF THE CONDUCT OF THAT DEFENDANT OR THOSE DEFENDANTS. IF YOU FIND THAT A PLAINTIFF IS ENTITLED TO RECOVER DAMAGES FOR A PARTICULAR INJURY AGAINST MORE THAN ONE DEFENDANT, YOU MUST DELIVER YOUR VERDICT AS TO THAT CLAIM IN ONE, SINGLE SUM AGAINST ALL THE DEFENDANTS WHOM YOU FIND TO BE LIABLE FOR DAMAGES TO COMPENSATE THE PLAINTIFF FOR HIS LOSS. (You must divide the sum amount you award for general damages.)

THE BURDEN OF PROOF IS ON THE PLAINTIFF TO ESTABLISH WHAT AMOUNT OF DAMAGES HE IS ENTITLED TO RECOVER AS COMPENSATION FOR LOSSES. THE AMOUNT OF YOUR VERDICT FOR COMPENSATORY DAMAGES, IF THERE BE ONE, MUST BE BASED UPON THE EVIDENCE PRESENTED AS TO A PLAINTIFF'S LOSS OF THE OPPORTUNITY THAT HE SHOULD HAVE HAD TO EXERCISE HIS FIRST AMENDMENT RIGHTS OCCASIONED BY THE CONDUCT OF THE RESPONSIBLE DEFENDANT OR DEFENDANTS. COMPENSATORY DAMAGES DO, OF COURSE, EMBRACE THE PROVEN OUT-OF-POCKET EXPENSES, IF ANY, OF A PLAINTIFF THAT WERE EXPENDED AS A PROXIMATE RESULT OF THE CONDUCT OF

THE RESPONSIBLE DEFENDANT OR DEFENDANTS, OR THAT WERE WASTED AS A RESULT OF THAT CONDUCT. COMPENSATORY DAMAGES ALSO EMBRACE MORE THAN RECOMPENSE FOR MONETARY DAMAGES, HOWEVER, AND MAY INCLUDE FAIR AND REASONABLE AMOUNTS FOR PROVEN PHYSICAL PAIN, MENTAL SUFFERING, AND HUMILIATION, IF ANY, THAT REFLECT THE DURATION AND INTENSITY OF THE INJURY. AND EVEN IF A CONSTITUTIONAL VIOLATION INFLICTS ONLY INTANGIBLE INJURY, COMPENSATION IS STILL APPROPRIATE. INSOFAR AS IT SEEKS TO COMPENSATE INTANGIBLE LOSSES OF FIRST AMENDMENT RIGHTS, YOUR AWARD MUST BE PROPORTIONED TO THE LOSS ACTUALLY SUFFERED BY A PLAINTIFF, AND SHOULD REFLECT THE DEGREE TO WHICH A DEFENDANT'S Read PP CONDUCT ACTUALLY ~~THWARTED~~ Impeded THE PLAINTIFF'S EXERCISE OF FIRST AMENDMENT RIGHTS. THE HARM SUSTAINED BY A PLAINTIFF TO HIS FIRST AMENDMENT RIGHTS MAY BE ESTABLISHED THROUGH DIRECT TESTIMONY OF THE PLAINTIFFS, OR MAY BE INFERRED FROM THE CIRCUMSTANCES THAT THE EVIDENCE HAS SHOWN EXISTED. AND, OF COURSE, YOU MAY NOT AWARD COMPENSATORY DAMAGES AGAINST A PARTICULAR DEFENDANT UNLESS IT IS ESTABLISHED, IN THE MANNER I HAVE ALREADY DESCRIBED TO YOU, THAT THAT DEFENDANT WAS RESPONSIBLE FOR THE INJURY FOR WHICH YOU WOULD AWARD DAMAGES, OR BELONGED TO A CONSPIRACY WHICH WAS RESPONSIBLE FOR THAT INJURY.

48 In addition to actual damages, the law permits the jury, under certain circumstances, to award the injured person punitive and exemplary damages, in order to punish ~~the wrongdoer~~ for some extraordinary misconduct, and to serve as an example or warning to others not to engage in such conduct.

If the jury should find from a preponderance of the evidence in the case that ~~the~~ plaintiff is entitled to a ver-

a

dict for actual or compensatory damages; and should further find that the act ~~or omission~~ of the defendant, which proximately caused actual injury or damage to the plaintiff, was maliciously, or wantonly, or oppressively done; then the jury may, if in the exercise of discretion they unanimously choose so to do, add to the award of actual damages such amount as the jury shall unanimously agree to be proper, as punitive and exemplary damages.

An act ~~or a failure to act~~ is "maliciously" done, if prompted or accompanied by ill will, or spite, or grudge, either toward the injured person individually, or toward all persons in one or more groups or categories of which the injured person is a member.

An act ~~or a failure to act~~ is "wantonly" done, if done in reckless or callous disregard of, or indifference to, the rights of one or more persons, including the injured person.

An act ~~or a failure to act~~ is "oppressively" done, if done in a way or manner which injures, or damages, or otherwise violates the rights of another person with unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness, or disability, or misfortune of another person.

Whether or not to make any award of punitive and exemplary damages, in addition to actual damages, is a matter exclusively within the province of the jury, if the jury should unanimously find, from a preponderance of the evidence in the case, that the defendant's act or omission, which proximately caused actual damage to the plaintiff, was maliciously or wantonly or opppressively done; but the jury should always bear in mind that such extraordinary damages may be allowed only if the jury ~~should first unanimously award~~ the plaintiff a verdict for actual or compensatory damages; and the jury should also bear in mind, not only the conditions under which, and the purposes for which, the law permits an award of punitive and exemplary damages to be made, but also the requirement of the law that the amount of such extraordinary damages, when awarded, must be fixed with calm discretion and sound reason, and must never be either awarded, or fixed in amount, because of any sympathy, or bias, or prejudice with respect to any party to the case.

[READ HERE]

If you find that the plaintiff is entitled to a verdict in accordance with these instructions, but do not find that the plaintiff has sustained substantial ~~damages~~ damages, then you may return a verdict for the plaintiff in some nominal sum such as one dollar ~~on account of actual damages~~.

~~The award of a nominal sum on account of actual damages would not preclude your awarding punitive damages in such amount as you deem appropriate, if you find that the award of punitive damages is justified under these instructions.~~

Now, as you know, the District of Columbia is a municipal corporation and not a natural person. You may award punitive damages against the defendant District of Columbia in such amount, if any, as you find to be appropriate in accordance with these instructions only if both of the following conditions are satisfied:

1) The plaintiff seeking punitive damages against the Dist. of Columbia has proven by a preponderance of the evidence that the District of Columbia is liable to the plaintiff for the conduct of one or more of its employees, according to the instruction on the District's liability I have already given to you; and

2) that the conduct of the employee that thus creates liability in the District of Columbia has been proven by a preponderance of the evidence to have occurred maliciously, wantonly, or oppressively, as I have defined those terms.

STATUTE OF LIMITATIONS

I SPOKE TO YOU DURING THE TRIAL ABOUT THE QUESTION OF WHETHER, EVEN IF PLAINTIFFS HAVE CLAIMS AGAINST DEFENDANTS, THEY FILED THEM SO LONG AFTER THE COMMISSION OF THE ACTS COMPLAINED OF THAT THE CLAIMS ARE BARRED BY WHAT WE CALL THE STATUTE OF LIMITATIONS. THE STATUTE OF LIMITATIONS IS A PROVISION OF THE LAW THAT REQUIRES THAT LAWSUITS BE COMMENCED ON CERTAIN TYPES OF CLAIMS WITHIN A PRESCRIBED PERIOD OF TIME. AS TO EACH CLAIM OF INJURY BASED ON THE FIRST AMENDMENT THAT THE PLAINTIFFS HAVE MADE, A PERSON IN THE DISTRICT OF COLUMBIA HAS THREE YEARS FROM THE TIME OF INJURY IN WHICH TO FILE A LAWSUIT BASED UPON SUCH A CLAIM. THAT THREE-YEAR TIME PERIOD HAS BEEN ESTABLISHED TO PROTECT THE LEGITIMATE INTEREST OF ANY PERSON OR ORGANIZATION IN BEING FREE OF CLAIMS AGAINST THEM AFTER THE PASSAGE OF THAT NUMBER OF YEARS, AND ALSO TO REDUCE THE PRACTICAL DIFFICULTIES IN ANY JUDICIAL ATTEMPT TO RECONSTRUCT THE TRUTH AFTER THE PASSAGE OF THAT AMOUNT OF TIME.

THE THREE-YEAR LIMITATION PERIOD IS MEASURED BACKWARD FROM THE DAY ON WHICH THE PLAINTIFFS COMMENCED THIS LAWSUIT. THEY STARTED THE LAWSUIT ON JULY 16, 1976. THE BASIC HARMS THE PLAINTIFFS CLAIM THEY SUFFERED ALL OCCURRED BEFORE JULY 16, 1973, A DATE THREE YEARS BEFORE THE COMMENCEMENT OF THE LAWSUIT. THE FACT THAT THE BASIC HARMS THE PLAINTIFFS CLAIM THUS OCCURRED

MORE THAN THREE YEARS BEFORE THE COMMENCEMENT OF THE LAWSUIT DOES NOT, HOWEVER, MEAN THAT ALL OF THE PLAINTIFFS' CLAIMS ARE NOW BARRED BY THE STATUTE OF LIMITATIONS. A PERSON MAY BE HARMED, AND KNOW HE HAS BEEN HURT, WITHOUT KNOWING OR BELIEVING THAT HE HAS, ON ACCOUNT OF HIS INJURY, A RIGHT TO RECOVER DAMAGES FOR IT FROM SOMEONE ELSE. A PERSON MAY, FOR EXAMPLE, HAVE NO IDEA WHO HURT HIM, OR WHAT THAT PERSON DID TO CAUSE THE INJURY. EACH PLAINTIFF IN THIS CASE ALLEGES, AS TO EACH OF HIS OR HER CLAIMS, THAT THE DEFENDANT OR DEFENDANTS RESPONSIBLE FOR INJURING THAT PLAINTIFF CONCEALED FROM THAT PLAINTIFF THE IDENTITY OF THOSE WHO CAUSED THE INJURY, OR THE CONDUCT THAT CAUSED THE INJURY. THE LAW PROVIDES THAT IF THE MATERIAL FACTS THAT ARE NEEDED FOR INTELLIGENT PROSECUTION OF THE CLAIM WERE DELIBERATELY CONCEALED BY THE PERSON OR PERSONS RESPONSIBLE FOR THE INJURY GIVING RISE TO THE CLAIM, THE STATUTE OF LIMITATIONS WILL NOT BEGIN TO "RUN" ON A CLAIM AND THEREBY, AFTER THE PASSAGE OF THREE YEARS, BAR ANY RECOVERY FOR IT UNTIL A PLAINTIFF EMPLOYING DUE DILIGENCE DISCOVERS OR REASONABLY COULD HAVE DISCOVERED THE MATERIAL FACTS CONCEALED FROM HIM.

BY DELIBERATE CONCEALMENT I MEAN THAT DEFENDANT OR A CONSPIRACY TO WHICH A DEFENDANT BELONGED DELIBERATELY KEPT INFORMATION AWAY FROM A PLAINTIFF WHICH WAS MATERIAL TO HIS CLAIM. IT IS IMMATERIAL WHETHER THE DEFENDANT OR CONSPIRACY

KEPT THE MATERIAL FROM PLAINTIFF BECAUSE THE AGENCY EMPLOYING THE DEFENDANT OR THE CONSPIRATORS BELIEVED THAT LAW ENFORCEMENT CONSIDERATIONS REQUIRED CONCEALMENT OR THE MATERIAL FACTS WERE CONCEALED FOR THE PURPOSE OF IMPEDING PLAINTIFF'S PROSECUTION OF THEIR CLAIMS.

MATERIAL FACTS

THE MATERIAL FACTS NECESSARY FOR INTELLIGENT PROSECUTION OF A LAWSUIT ARE NOT, OF COURSE, ALL THE FACTS A PLAINTIFF MIGHT ATTEMPT TO PROVE IN A TRIAL. A PLAINTIFF MUST HAVE KNOWN ENOUGH ABOUT WHAT HAPPENED TO THAT PLAINTIFF, HOW IT HAPPENED, AND WHO CAUSED IT TO HAPPEN THAT A REASONABLE PERSON IN THAT PLAINTIFF'S SITUATION WOULD HAVE CONSULTED A LAWYER IN GOOD FAITH FOR THE PURPOSE OF OBTAINING REDRESS IN COURT.

UNLESS A PLAINTIFF PROVES BY PREPONDERANCE OF THE EVIDENCE THAT AT ALL TIMES BEFORE JULY 16, 1973, THAT PLAINTIFF DID, AS TO A PARTICULAR CLAIM, LACK KNOWLEDGE OF ANY OF THE MATERIAL FACTS NEEDED FOR INTELLIGENT PROSECUTION OF THE ACTION, THEN YOU MUST FIND FOR THE DEFENDANT ON THAT CLAIM AGAINST THAT PLAINTIFF.

IF IT DOES APPEAR THAT, AS TO A PARTICULAR CLAIM, ONE OR MORE OF THE DEFENDANTS RESPONSIBLE FOR THE INJURY SUFFERED BY A PLAINTIFF DID ENGAGE IN DELIBERATE CONCEALMENT OF A MATERIAL FACT OR MATERIAL FACTS NEEDED FOR INTELLIGENT

PROSECUTION OF THAT CLAIM, THEN THE DEFENDANT OR DEFENDANTS RESPONSIBLE FOR THE INJURY HAS OR HAVE THE BURDEN OR PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE PLAINTIFF COULD NONETHELESS HAVE DISCOVERED THE MATERIAL FACT OR FACTS BY THE EXERCISE OF DUE DILIGENCE BEFORE JULY 16, 1973.

DUE DILIGENCE IS SIMPLY THE ATTENTION TO HIS OWN AFFAIRS AND THE CIRCUMSTANCES THAT CONFRONT HIM THAT A REASONABLE MAN WOULD EXERCISE IN THE SITUATION OF THE PLAINTIFF. UNLESS THE DEFENDANT OR DEFENDANTS CARRY THE BURDEN OF PROVING THAT THE PLAINTIFF FAILED TO EXERCISE DUE DILIGENCE UNDER THE CIRCUMSTANCES WHICH WOULD HAVE LED HIM TO DISCOVER THE FACTS NEEDED BY A REASONABLE PERSON IN PLAINTIFF'S SITUATION TO HAVE CONSULTED A LAWYER FOR THE PURPOSE OF OBTAINING REDRESS IN COURT, THEN THE STATUTE OF LIMITATIONS WILL NOT BEGIN TO RUN ON THAT CLAIM UNTIL THE PLAINTIFF LEARNED OR REASONABLY SHOULD HAVE LEARNED THE MATERIAL FACTS NEEDED FOR THAT PURPOSE. IF SUCH A MATERIAL FACT WAS NOT LEARNED, OR IF IT COULD NOT REASONABLY HAVE BEEN EXPECTED TO HAVE BEEN LEARNED, UNTIL AFTER JULY 16, 1973 -- THE DATE THREE YEARS BEFORE COMMENCEMENT OF THIS LAWSUIT -- THEN THE PARTICULAR CLAIM IS NOT BARRED BY THE STATUTE OF LIMITATIONS.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JULIUS HOBSON, et al.,	:	
Plaintiffs,	:	
v.	:	Civil Action No. 76-1326
JERRY WILSON, et al.,	:	
Defendants.	:	

SPECIAL VERDICT FORM

1. Did any of the following defendants independently injure plaintiff Waskow in the exercise of his First Amendment rights or participate in one or more conspiracies that so injured plaintiff Waskow?

Defendant	By alleged Independ. Yes/No	By alleged Fed. Cons. Yes/No	By alleged D.C. Cons. Yes/No	By alleged Govt. Cons. Yes/No
Brennan				
Moore				
Jones				
Grimaldi				
Pangburn				
Wilson				
Herlihy				
Acree				
Scrapper				
Jagen				
Suter				
Mahaney				
Markovich				
Dist. of Col.				

If your answer is "no" to all of the foregoing questions, you should proceed no further; your "no" answers constitute a verdict for defendants. If your answer to any of these questions is "yes," proceed.

2. Were any of the following defendants immune from responsibility as found in no. 1 above, because he was engaged in

law enforcement and reasonably and in good faith believed that his conduct was lawful?

Defendant	Immune	Not Immune
Brennen		
Moore		
Jones		
Grimaldi		
Pangburn		
Wilson		
Herlihy		
Acree		
Scrapper		
Jagen		
Suter		
Mahaney		
Markovich		
Dist. of Col.		

Your "immune" answers constitute a verdict for each defendnt whom you have found to be immune. If you answered "immune" to all of the foregoing questions in no. 2, you should proceed no further. If you have answered any of the foregoing questions in no. 2 "not immune," proceed.

3. Was the liability of any defendant about whom you answered "yes" to question no. 1 and "not immune" to question no. 2 barred by the Statute of Limitations?

Defendant	Claims Barred	Claims Not Barred
Brennen		
Moore		
Jones		
Grimaldi		
Pangburn		
Wilson		
Herlihy		
Acree		
Scrapper		
Jagen		

Suter

Mahaney

Markovich

Dist. of Col.

Your answer of "claims barred" constitutes a verdict for each defendant so identified. If you answered "claims not barred" with respect to any defendant, you should proceed.

4. If with respect to a defendant you have answered "yes" to question no. 1, "not immune" to question no. 2, and "claims not barred" to question no. 3, you should enter opposite the name of that defendant as your verdict the amount of compensatory damages (if any) you find to be required fairly and reasonably to compensate plaintiff Waskow, the amount of punitive damages (if any), and/or the amount of nominal damages (if any) to which you find plaintiff Waskow is entitled.

Name	Amount of Compensatory	Amount of Punitive	Amount of Nominal	Total
Brennen				
Moore				
Jones				
Grimaldi				
Pangburn				
Wilson				
Herlihy				
Acree				
Scrapper				
Jagen				
Suter				
Mahaney				
Markovich				
Dist. of Col.				

Hobson v. Wilson
Jury Instructions

General and Introductory Instructions

Ladies and gentlemen, as you know, in this action seven individuals and two organizations seek damages against present and former members of the Federal Bureau of Investigation and the Metropolitan Police Department and against the government of the District of Columbia. It is now my duty to instruct you on the law you are to apply in reaching your verdict in this case. I will deal with the special rules of law that apply to a damage action like this case in a moment, but first I want to explain to you certain general rules of law that must govern you in your deliberations.

Standard Civil Jury Instructions with amendments:

1-1, 1-2, 1-3, 1-4, 1-5, 1-6, 1-7, 1-8, 1-10

2-1, 2-2, 2-3 (amendment explaining reason for deletions from some documents and how they are to be treated), 2-4, 2-5, 2-6, 2-7, 2-8, 2-9, 2-10, special instruction on hearsay (ref. Winkelman transcripts--exception 804)

3-1, plaintiff's special # 8 (first and third sentences only), 3-2, 3-5, 3-8, 3-9

4-1, 4-2, 4-3

On intent: see Crim. Instr., FBI ## 8, 21, plaintiff's 10

On proximate cause: Civil # 5-11

INTRODUCTION

IN INSTRUCTING YOU AS TO THE LAW TO BE APPLIED IN THIS CASE, I AM FIRST GOING TO STATE CERTAIN PRINCIPLES OF LAW OR DEFINITIONS OF THE APPLICABLE LAW. THEN I WILL INSTRUCT YOU SPECIFICALLY AS TO HOW YOU APPLY THE PRINCIPLES TO THE FACTS OF THIS CASE IN ORDER TO ARRIVE AT YOUR VERDICT.

SUMMARY OF CLAIMS AND DEFENSES

THE PLAINTIFFS HERE CLAIM THAT THE DEFENDANTS INJURED RIGHTS GUARANTEED TO THE PLAINTIFFS BY THE FIRST AMENDMENT OF THE CONSTITUTION TO EXPRESS FREELY THEIR VIEWS AND ATTITUDES AND DEBATE PUBLICLY ISSUES AND TO ASSEMBLE PUBLICLY AND TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES. THESE ARE AMONG OUR SO-CALLED FIRST AMENDMENT RIGHTS ALONG WITH THE FREEDOM OF THE PRESS AND FREEDOM OF RELIGION. THE GOVERNMENT AND PEOPLE WORKING FOR THE GOVERNMENT MAY NOT INTERFERE WITH THESE RIGHTS EXCEPT UNDER CERTAIN CONDITIONS.

THEREFORE, THE QUESTIONS BEFORE YOU BASICALLY ARE WHETHER THE DEFENDANTS ACTING INDIVIDUALLY OR AS ALLEGED CO-CONSPIRATORS, A TERM THAT I WILL EXPLAIN, INJURED A PLAINTIFF BY PREVENTING THAT PLAINTIFF FROM EXERCISING, OR IMPEDING THAT PLAINTIFF IN THE EXERCISE, OF RIGHTS GUARANTEED BY THE FIRST AMENDMENT TO ASSEMBLE AT A PARTICULAR TIME AND PLACE OR TO ASSOCIATE WITH ONE OR MORE OTHER PARTICULAR PERSONS.

AS I HAVE STATED, PEOPLE WORKING FOR THE GOVERNMENT MAY LAWFULLY INTERFERE WITH SPEECHES, ASSEMBLIES, AND ASSOCIATIONS THAT HAVE POLITICAL PURPOSES IN CERTAIN LIMITED CIRCUMSTANCES. FOR EXAMPLE, GOVERNMENT OFFICIALS HAVE A DUTY TO PREVENT DOMESTIC VIOLENCE TO PERSONS AND PROPERTY, TO PREVENT INTERRUPTION OF ORDERLY ACTIVITIES (SUCH AS TRAFFIC), TO PROTECT THE NATION FROM

FOREIGN ENEMIES, AND TO INVESTIGATE AND PREVENT CRIMINAL ACTIVITIES. DEFENDANTS CLAIM THAT IF THEY COMMITTED THE ACTS ABOUT WHICH PLAINTIFFS COMPLAIN, THEY DID SO FOR THOSE PURPOSES. IT IS NECESSARY FOR YOU TO DECIDE, THEREFORE, WHETHER A REASONABLE PERSON IN A DEFENDANT'S SITUATION COULD BELIEVE THAT HIS CONDUCT WOULD NOT IMPEDE A PLAINTIFF'S EXERCISE OF FIRST AMENDMENT RIGHTS, OR THAT, IN SO IMPEDING, HE WAS NEVERTHELESS ACTING WITH A REASONABLE GOOD-FAITH BELIEF THAT HIS CONDUCT WAS LAWFUL.

FINALLY, IF YOU FIND THAT A DEFENDANT'S CONDUCT INJURED A PLAINTIFF'S FIRST AMENDMENT RIGHTS AND THAT CONDUCT WAS NOT JUSTIFIED, YOU MUST PROCEED TO DETERMINE WHETHER THAT DEFENDANT OR A CONSPIRACY TO WHICH HE BELONGED DELIBERATELY CONCEALED FROM THAT PLAINTIFF KNOWLEDGE OF IMPORTANT FACTS ABOUT HIS CASE IN SUCH A WAY THAT THE PLAINTIFF COULD NOT HAVE DISCOVERED BY THE EXERCISE OF DUE DILIGENCE ENOUGH FACTS TO FILE A SUIT IN COURT IN THE TIME ALLOWED BY THE STATUTE OF LIMITATIONS FOR THE FILING OF SUCH A SUIT.

DEFINITION OF ASSOCIATION OR ASSEMBLY

THE FIRST AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES GUARANTEES FROM UNREASONABLE INTERFERENCE BY ANY GOVERNMENT OFFICIAL "FREEDOM OF SPEECH" AND "THE RIGHT OF THE PEOPLE PEACEABLY TO ASSEMBLE, AND TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES."

THE RIGHT TO SPEAK AND TO ASSEMBLE FOR THAT PURPOSE INCLUDES THE RIGHT TO JOIN WITH OR ASSOCIATE WITH OTHERS FOR THE PURPOSE OF POLITICAL EXPRESSION.

WHEN I USE THE TERMS "ASSOCIATE" AND "ASSEMBLE," I REFER TO THE ACT OR ACTS OF ASSOCIATION IN SUPPORT OF A POLITICAL CAUSE, SUCH AS PARTICIPATION IN A PARTICULAR DEMONSTRATION, OR CONTRIBUTING TIME OR MONEY TO AN ORGANIZATION ADVOCATING A CAUSE ADVOCATED BY A PLAINTIFF, OR SIGNING A PETITION OR LETTER IN SUPPORT OF THAT CAUSE.

DEFINITION OF IMPEDING

WHEN I SPEAK OF IMPEDING ASSOCIATION OR ASSEMBLY, I INCLUDE IMPEDING ANOTHER PERSON FROM ASSEMBLING OR ASSOCIATING WITH PLAINTIFF OR WITH AN ORGANIZATION TO WHICH THAT PLAINTIFF BELONGED. IMPEDING MEANS MAKING SUBSTANTIALLY MORE DIFFICULT. ACTS OF A DEFENDANT HAVE IMPEDED ASSOCIATION OR ASSEMBLY IF THOSE ACTS HAVE MADE THAT ASSOCIATION OR ASSEMBLY SUBSTANTIALLY MORE DIFFICULT THAN IT WOULD HAVE BEEN IF THE ACT OR ACTS OF A CONSPIRACY TO WHICH THE DEFENDANT BELONGED HAD NOT BEEN COMMITTED.

DEFINITION OF INJURY

WHEN I SPEAK OF INJURY TO FIRST AMENDMENT RIGHTS, I MEAN PREVENTING OR IMPEDING THE TYPE OF SPEECH, ASSEMBLY, PETITIONING, OR ASSOCIATION I HAVE DESCRIBED. THIS INJURY MUST NOT BE SUBJECTIVE, SOMETHING THAT EXISTS ONLY IN A PLAINTIFF'S MIND; IT MUST BE AN ACTUAL INJURY THAT AN OBJECTIVE PERSON CAN RECOGNIZE. THE INJURY MAY BE TANGIBLE OR INTANGIBLE, BUT IT MUST BE AN INJURY THAT HAS IMPAIRED FREE EXERCISE OR ENJOYMENT OF FIRST AMENDMENT RIGHTS BY A PARTICULAR PLAINTIFF.

DEFINITION OF CONSPIRACY

A CONSPIRACY IS A COMBINATION OF TWO OR MORE PERSONS ACTING TOGETHER FOR THE PURPOSE OF INJURING SOMEONE ELSE IN THE EXERCISE OF THAT OTHER PERSON'S FIRST AMENDMENT RIGHTS. TO HAVE PARTICIPATED IN THE CONSPIRACY, A PERSON NEED NOT HAVE JOINED IT AT ITS INCEPTION; A CONSPIRACY MAY ADD PARTICIPANTS OVER TIME. EACH PARTICIPANT IN A CONSPIRACY NEED NOT KNOW THE EXACT LIMITS OF THE ILLEGAL PLAN OR THE IDENTITY OF ALL THE PARTICIPANTS IN THE CONSPIRACY. HOWEVER, THE PARTICIPANTS IN A CONSPIRACY SHARE THE SAME GENERAL CONSPIRATORIAL OBJECTIVE: THERE EXISTS AMONG CONSPIRATORS A MEETING OF THE MINDS WHICH CREATES AN UNDERSTANDING TO ACHIEVE THE CONSPIRACY'S OBJECTIVES. THUS ALL PARTICIPANTS KNOW THE COMMON PLAN; EACH KNOWS THE CONSPIRACY'S ESSENTIAL NATURE AND GENERAL SCOPE.

PARTICIPANTS IN A CONSPIRACY MAY BE HELD LIABLE FOR INJURY WHICH IT CAUSED TO OTHERS ONLY IF ONE OR MORE MEMBERS OF THE CONSPIRACY COMMITTED AT LEAST ONE OVERT ACT IN FURTHERANCE OF THE CONSPIRACY.

TO MAKE DEFENDANTS LIABLE FOR INJURY WHICH IT CAUSED TO OTHERS, PLAINTIFFS MUST PROVE THAT THE CONSPIRACY DISCRIMINATED WITH HOSTILITY AGAINST A GROUP OR CLASS TO WHICH A PLAINTIFF BELONGED BECAUSE OF THE POLITICAL PURPOSES AND ACTIVITIES OF THE GROUP OR CLASS, WITH A VIEW TO SINGLING OUT THAT GROUP OR CLASS FOR INTERFERENCE

DEFINITION OF CONSPIRACY

A CONSPIRACY IS A COMBINATION OF TWO OR MORE PERSONS ACTING TOGETHER FOR THE PURPOSE OF INJURING SOMEONE ELSE IN THE EXERCISE OF THAT OTHER PERSON'S FIRST AMENDMENT RIGHTS. TO HAVE PARTICIPATED IN THE CONSPIRACY, A PERSON NEED NOT HAVE JOINED IT AT ITS INCEPTION; A CONSPIRACY MAY ADD PARTICIPANTS OVER TIME. EACH PARTICIPANT IN A CONSPIRACY NEED NOT KNOW THE EXACT LIMITS OF THE ILLEGAL PLAN OR THE IDENTITY OF ALL THE PARTICIPANTS IN THE CONSPIRACY. HOWEVER, THE PARTICIPANTS IN A CONSPIRACY SHARE THE SAME GENERAL CONSPIRATORIAL OBJECTIVE: THERE EXISTS AMONG CONSPIRATORS A MEETING OF THE MINDS WHICH CREATES AN UNDERSTANDING TO ACHIEVE THE CONSPIRACY'S OBJECTIVES. THUS ALL PARTICIPANTS KNOW THE COMMON PLAN; EACH KNOWS THE CONSPIRACY'S ESSENTIAL NATURE AND GENERAL SCOPE.

PARTICIPANTS IN A CONSPIRACY MAY BE HELD LIABLE FOR INJURY WHICH IT CAUSED TO OTHERS ONLY IF ONE OR MORE MEMBERS OF THE CONSPIRACY COMMITTED AT LEAST ONE OVERT ACT IN FURTHERANCE OF THE CONSPIRACY.

TO MAKE DEFENDANTS LIABLE FOR INJURY WHICH IT CAUSED TO OTHERS, PLAINTIFFS MUST PROVE THAT THE CONSPIRACY DISCRIMINATED WITH HOSTILITY AGAINST A GROUP OR CLASS TO WHICH A PLAINTIFF BELONGED BECAUSE OF THE POLITICAL PURPOSES AND ACTIVITIES OF THE GROUP OR CLASS, WITH A VIEW TO SINGLING OUT THAT GROUP OR CLASS FOR INTERFERENCE

WITH ITS RIGHTS, EQUAL TO THAT OF THE GENERAL PUBLIC, ~~WITH A RIGHT OF ITS MEMBERS, EQUAL TO THAT OF THE GENERAL PUBLIC~~ TO ASSEMBLE OR ASSOCIATE FOR POLITICAL PURPOSES.

DEFINITION OF OVERT ACTS

AN "OVERT ACT" IS SIMPLY ANY ACT KNOWINGLY COMMITTED BY ONE OF THE CONSPIRATORS, IN AN EFFORT TO EFFECT OR ACCOMPLISH SOME OBJECT OR PURPOSE OF THE CONSPIRACY.

IMMUNITY

ALL OF THE INDIVIDUAL DEFENDANTS IN THIS LAWSUIT WERE, AT THE TIME WHEN THE PLAINTIFFS CLAIM THEY INJURED THE PLAINTIFFS, EMPLOYEES OF THE METROPOLITAN POLICE DEPARTMENT OR THE FEDERAL BUREAU OF INVESTIGATION. UNDER THE LAW, A PUBLIC SERVANT IS NOT LIABLE FOR PAYMENT OF MONEY DAMAGES BECAUSE HE VIOLATED FIRST AMENDMENT RIGHTS AND INJURED A PERSON IF HIS CONDUCT CAUSING THE INJURY OCCURRED IN THE COURSE OF HIS PUBLIC EMPLOYMENT, IF HE WAS ACTING AT THE TIME WITH A GOOD-FAITH BELIEF THAT HIS CONDUCT WAS LAWFUL, AND IF UNDER THE CIRCUMSTANCES THAT GOOD-FAITH BELIEF WAS REASONABLE.

THIRD DRAFT

(CONSPIRACY - OPERATIVE)

PLAINTIFFS CLAIM THAT THE DEFENDANTS AGREED AMONG THEMSELVES TO ONE OR MORE CONSPIRACIES TO DISRUPT AND DISCREDIT, WITHOUT JUST CAUSE, PLAINTIFFS' PEACEFUL POLITICAL ACTIVITIES.

PLAINTIFFS FURTHER CLAIM THAT ONE OR MORE OF THE PARTICIPANTS IN THE CONSPIRACY COMMITTED SPECIFIC ACTS INTENDED TO CARRY OUT THE PURPOSES OF THE CONSPIRACY OR CONSPIRACIES.

FINALLY, PLAINTIFFS CLAIM THAT ONE OR MORE OF THE ACTS COMMITTED TO CARRY OUT THE PURPOSES OF THE CONSPIRACY OR CONSPIRACIES VIOLATED THE CONSTITUTIONAL RIGHTS OF ONE OR MORE PLAINTIFFS BY IMPEDING THEIR EFFORTS TO ASSOCIATE AND ASSEMBLE WITH OTHER PERSONS, TO OPPOSE CONTINUATION OF THE WAR IN VIET NAM, AND TO OPPOSE RACIAL DISCRIMINATION.

IF YOU FIND THAT PLAINTIFFS HAVE PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT (1) DEFENDANTS PARTICIPATED IN A PLAN TO DISRUPT OR DISCREDIT PLAINTIFFS' ACTIVITIES, (2) ONE OR MORE OF THE CONSPIRATORS COMMITTED ACTS IN FURTHERANCE OF THAT PLAN, AND (3) ONE OR MORE OF THOSE ACTS IMPEDED ASSOCIATION OR ASSEMBLY OF OTHER PERSONS WITH ONE OR MORE PLAINTIFFS, YOU SHOULD FIND FOR THE PLAINTIFFS AGAINST DEFENDANTS. YOU SHOULD THEN PROCEED TO CONSIDER WHICH DEFENDANT OR DEFENDANTS PARTICIPATED IN THE CONSPIRACY, AND YOU

SHOULD ENTER A VERDICT AGAINST THAT DEFENDANT OR THOSE DEFENDANTS IN FAVOR OF EACH PLAINTIFF WHO HAS PROVED INJURY PROXIMATELY CAUSED BY THAT CONSPIRACY.

IN DETERMINING WHETHER A DEFENDANT IS LIABLE TO PLAINTIFF, IT IS NOT NECESSARY TO FIND THAT A DIRECT AND IMMEDIATE ACT OF THAT PARTICULAR DEFENDANT CAUSED THE INJURY SO LONG AS THE ACT CAUSING INJURY WAS COMMITTED BY SOME ONE OR MORE OF THAT DEFENDANT'S CO-CONSPIRATORS. NOR IS IT NECESSARY TO FIND THAT THE CO-CONSPIRATOR WHOSE ACT DIRECTLY CAUSED THE INJURY WAS A DEFENDANT. THE DEFENDANT MUST, HOWEVER, HAVE BEEN PROVED BY A PREPONDERANCE OF THE EVIDENCE TO HAVE BEEN A MEMBER OF THE CONSPIRACY AT THE TIME THE CO-CONSPIRATOR ACTED TO INJURE THE PLAINTIFF IN FURTHERANCE OF HIS OR HER CONSPIRATORIAL AGREEMENT WITH THAT DEFENDANT.

THE FACT THAT THE INDIVIDUAL DEFENDANTS WERE ENGAGED IN LAW ENFORCEMENT WORK IN PARTICULAR AGENCIES OF THE F.B.I. AND THE POLICE DEPARTMENT IS NOT, STANDING ALONE, PROOF OF A CONSPIRACY, NOR DOES THAT FACT PRECLUDE THE EXISTANCE OF A CONSPIRACY BETWEEN SOME OR ALL OF THEM.

IF NO PLAINTIFF HAS PROVED ANY CONSPIRACY BY A PREPONDERANCE OF THE EVIDENCE, YOU SHOULD ENTER A VERDICT FOR DEFENDANTS ON THE CONSPIRACY ISSUE. IF NO PLAINTIFF HAS PROVED THAT A PARTICULAR DEFENDANT WAS A MEMBEER OF A CONSPIRACY AT THE TIME THE CONSPIRACY INJURED PLAINTIFF, YOU

SHOULD RETURN A VERDICT FOR THAT DEFENDANT ON THE ISSUE OF CONSPIRACY. IF A PARTICULAR PLAINTIFF HAS FAILED TO PROVE THAT A CONSPIRACY INJURED THAT PLAINTIFF, YOU MAY NOT RETURN A VERDICT FOR THAT PLAINTIFF ON THE ISSUE OF THE CONSPIRACY.

INDIVIDUAL LIABILITY

IN ADDITION TO THE CONSPIRACIES CLAIMS, PARTICULAR PLAINTIFFS CLAIM THAT INDIVIDUAL DEFENDANTS ARE LIABLE TO ONE OR MORE PLAINTIFFS BECAUSE SOME CONDUCT OF THAT INDIVIDUAL DEFENDANT VIOLATED THAT PLAINTIFF'S FIRST AMENDMENT RIGHT TO ASSEMBLE OR ASSOCIATE, SO AS PROXIMATELY TO CAUSE INJURY TO THAT PLAINTIFF. IF YOU FIND THAT NO PLAINTIFF HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT THE CONDUCT OF AN INDIVIDUAL DEFENDANT VIOLATED ANY PLAINTIFF'S FIRST AMENDMENT RIGHT TO SPEAK, ASSEMBLE, PETITION, OR ASSOCIATE SO AS PROXIMATELY TO CAUSE INJURY TO ANY PLAINTIFF, YOU SHOULD RETURN A VERDICT FOR THAT DEFENDANT ON THE ISSUE OF INDIVIDUAL LIABILITY. IF ONE OR MORE PLAINTIFFS HAS PROVED BY A PREPONDERANCE OF THE EVIDENCE THAT SOME CONDUCT OF AN INDIVIDUAL DEFENDANT PROXIMATELY CAUSED INJURY TO ONE OR MORE PLAINTIFFS IN THE MANNER STATED, YOU SHOULD RETURN A VERDICT FOR THAT PLAINTIFF OR THOSE PLAINTIFFS AGAINST THAT DEFENDANT.

DISTRICT OF COLUMBIA --
LIABILITY FOR ACTS OF EMPLOYEES

AS YOU KNOW, THE DISTRICT OF COLUMBIA IS ALSO A DEFENDANT IN THIS ACTION. WHEN AN EMPLOYEE OF THE DISTRICT OF COLUMBIA TAKES ACTION IN EXECUTION OF THE DISTRICT'S POLICIES OR CUSTOMS, WHETHER THOSE POLICIES OR CUSTOMS ARE MADE BY ITS LAWMAKERS OR SIMPLY ARE POLICIES THAT ARE GENERALLY ENFORCED BY DISTRICT EMPLOYEES IN THE COMMUNITY WITH THE IMPLICIT APPROVAL OF THE DISTRICT GOVERNMENT, THAT EMPLOYEE ACTS ON BEHALF OF THE DISTRICT OF COLUMBIA. IF A PLAINTIFF PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT ONE OR MORE OF THE DEFENDANTS PROXIMATELY CAUSED INJURY TO THAT PLAINTIFF WHILE ACTING ON BEHALF OF THE DISTRICT OF COLUMBIA IN THE MANNER I HAVE DESCRIBED, THE DISTRICT OF COLUMBIA IS LIABLE FOR THE INJURIES SO CAUSED. ON THE OTHER HAND, IF A PLAINTIFF FAILS TO PROVE THAT CONDUCT OF A DISTRICT OF COLUMBIA EMPLOYEE PROXIMATELY CAUSING THAT PLAINTIFF'S INJURY WAS TAKEN IN EXECUTION OF THE DISTRICT'S POLICIES OR CUSTOMS, THE DISTRICT OF COLUMBIA IS NOT LIABLE FOR THAT EMPLOYEE'S CONDUCT.

IMMUNITY - OPERATIVE

IF YOU FIND THAT A PARTICULAR DEFENDANT HAS INJURED A PLAINTIFF OR BELONGED TO A CONSPIRACY THAT DID SO, IN VIOLATION OF THE FIRST AMENDMENT, YOU SHOULD PROCEED TO CONSIDER WHETHER THE DEFENDANT IS NEVERTHELESS IMMUNE FROM LIABILITY FOR DAMAGES.

A PUBLIC OFFICIAL IS ENTITLED TO IMMUNITY FROM LIABILITY FOR ACTS PERFORMED IN THE REGULAR COURSE OF DUTY IF THE OFFICIAL PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT SINCERELY AND REASONABLY BELIEVED HE WAS ACTING LAWFULLY AND WITHIN HIS SPHERE OF OFFICIAL RESPONSIBILITY.

PROOF THAT A DEFENDANT IS ENTITLED TO IMMUNITY AS TO ONE INJURY HE HAS CAUSED IS NOT IN ITSELF PROOF OF AN ENTITLEMENT TO IMMUNITY AS TO ANOTHER. A DEFENDANT MUST PROVE THAT HE IS ENTITLED TO IMMUNITY AS TO A PARTICULAR CLAIM FOR WHICH HE ASSERTS IMMUNITY, OR HE IS NOT ENTITLED TO IMMUNITY AS TO THAT CLAIM.

TO BE ENTITLED TO IMMUNITY AS TO A PARTICULAR CLAIM, A DEFENDANT MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE CONDUCT FOR WHICH HE WOULD OTHERWISE BE HELD LIABLE EITHER AS A CONSPIRATOR OR AS AN INDIVIDUAL RESPONSIBLE ONLY FOR HIS OWN ACTS WAS IN GOOD FAITH ACTUALLY BELIEVED BY THAT DEFENDANT TO BE AUTHORIZED BY LAW. A DEFENDANT MUST ALSO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT HIS BELIEF THAT

HIS ACTION WAS AUTHORIZED BY LAW WAS REASONABLE UNDER THE CIRCUMSTANCES. IN DETERMINING WHETHER A DEFENDANT REASONABLY BELIEVED THAT HIS CONDUCT WAS LAWFUL, YOU SHOULD TAKE INTO ACCOUNT THE EXPERIENCE, TRAINING AND RANK OF THE DEFENDANT WITHIN THE METROPOLITAN POLICE DEPARTMENT OR THE FEDERAL BUREAU OF INVESTIGATION. YOU ARE ALSO INSTRUCTED THAT A DEFENDANT IS ENTITLED, IN THE COURSE OF HIS OFFICIAL DUTIES, TO RELY ON SUCH TRADITIONAL SOURCES OF INFORMATION AS WOULD A REASONABLE PERSON UNDER THE CIRCUMSTANCES. IF YOU FIND THAT A DEFENDANT HAS PROVEN BY A PREPONDERANCE OF THE EVIDENCE THAT HIS BELIEF IN THE LAWFULNESS OF HIS CONDUCT, EVEN THOUGH ERRONEOUS IN HINDSIGHT, WAS IN GOOD FAITH, AND WAS SUCH A BELIEF AS A REASONABLY PRUDENT AND CONSCIENTIOUS OFFICER MIGHT POSSESS UNDER THE CIRCUMSTANCES THAT CONFRONTED THE DEFENDANT, YOU SHOULD ENTER A VERDICT FOR THAT DEFENDANT ON THAT CLAIM. WHILE A PUBLIC OFFICER IS NOT CHARGED WITH PREDICTING FUTURE DEVELOPMENTS IN THE LAW OF THE FIRST AMENDMENT, HIS CONDUCT MAY NOT BE JUSTIFIED BY IGNORANCE OR DISREGARD OF SETTLED, INDISPUTABLE RULES THAT HE SHOULD HAVE REASONABLY SO RECOGNIZED AT THE TIME OF HIS INJURIOUS CONDUCT.

YOU ARE INSTRUCTED THAT PLAINTIFF'S RIGHT PEACEABLY TO ASSEMBLE, TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES, AND TO ASSOCIATE FOR THOSE PURPOSES, WAS CLEARLY ESTABLISHED AT ALL TIMES RELEVANT TO THIS CASE. IF YOU FIND THAT A

DEFENDANT, NEVERTHELESS, REASONABLY BELIEVED IN GOOD FAITH THAT THE CONDUCT FOR WHICH HE HAS BEEN FOUND RESPONSIBLE ON THE CLAIM OF A PARTICULAR PLAINTIFF WAS NOT OF THE SORT WHICH WOULD VIOLATE THAT PLAINTIFF'S RIGHT TO ASSEMBLE, PETITION, OR ASSOCIATE OR THAT SUCH CONDUCT WAS JUSTIFIED AS A LAWFUL EXERCISE OF HIS LAW ENFORCEMENT RESPONSIBILITIES YOU SHOULD RETURN A VERDICT FOR THAT DEFENDANT ON THAT CLAIM OF THAT PLAINTIFF.

as for eg.

IMMUNITY OF THE DISTRICT OF COLUMBIA

ALL THAT I HAVE SAID SO FAR APPLIES TO THE INDIVIDUAL DEFENDANTS' CLAIMS OF IMMUNITY FROM LIABILITY IN DAMAGES. THE DISTRICT OF COLUMBIA, IF FOUND BY YOU TO BE LIABLE FOR INJURIES TO PLAINTIFFS UNDER THE RULES UPON WHICH I HAVE YOU, INSTRUCTED YOU, CAN NEVER BE ENTITLED TO IMMUNITY BECAUSE ITS EMPLOYEES ACTED IN GOOD FAITH AND WITH A REASONABLE BELIEF THAT THEIR CONDUCT WAS LAWFUL. THUS IT IS IMPOSSIBLE FOR YOU TO FIND THAT THE DISTRICT OF COLUMBIA IS IMMUNE FROM LIABILITY FOR DAMAGES IT HAS CAUSED, EVEN IF YOU FIND THAT THE INDIVIDUAL EMPLOYEE OR EMPLOYEES WHO EXECUTED ITS POLICIES OR CUSTOMS IN THE COURSE OF THEIR EMPLOYMENT ARE ENTITLED TO PERSONAL IMMUNITY.

[NOT PROGRAMMED]

DAMAGES

SHOULD YOU FIND THAT A PLAINTIFF HAS PROVEN A PARTICULAR CLAIM IN THE MANNER I HAVE ALREADY DESCRIBED, THAT A DEFENDANT RESPONSIBLE FOR THE INJURY IS NOT ENTITLED TO IMMUNITY FROM LIABILITY IN DAMAGES, AND THAT THE CLAIM IS NOT BARRED BY THE STATUTE OF LIMITATIONS, YOU MUST PROCEED TO FIX THE AMOUNT OF DAMAGES, IF ANY, REQUIRED FAIRLY AND REASONABLY TO COMPENSATE THE PLAINTIFF FOR THE INJURY SUFFERED BY THAT PLAINTIFF AS A RESULT OF THE CONDUCT OF THAT DEFENDANT OR THOSE DEFENDANTS. IF YOU FIND THAT A PLAINTIFF IS ENTITLED TO RECOVER DAMAGES FOR A PARTICULAR INJURY AGAINST MORE THAN ONE DEFENDANT, YOU MUST DELIVER YOUR VERDICT AS TO THAT CLAIM IN ONE, SINGLE SUM AGAINST ALL THE DEFENDANTS WHOM YOU FIND TO BE LIABLE FOR DAMAGES TO COMPENSATE THE PLAINTIFF FOR HIS LOSS.

THE BURDEN OF PROOF IS ON THE PLAINTIFF TO ESTABLISH WHAT AMOUNT OF DAMAGES HE IS ENTITLED TO RECOVER AS COMPENSATION FOR LOSSES. THE AMOUNT OF YOUR VERDICT FOR COMPENSATORY DAMAGES, IF THERE BE ONE, MUST BE BASED UPON THE EVIDENCE PRESENTED AS TO A PLAINTIFF'S LOSS OF THE OPPORTUNITY THAT HE SHOULD HAVE HAD TO EXERCISE HIS FIRST AMENDMENT RIGHTS OCCASIONED BY THE CONDUCT OF THE RESPONSIBLE DEFENDANT OR DEFENDANTS. COMPENSATORY DAMAGES DO, OF COURSE, EMBRACE THE PROVEN OUT-OF-POCKET EXPENSES, IF ANY, OF A PLAINTIFF THAT WERE EXPENDED AS A PROXIMATE RESULT OF THE CONDUCT OF

THE RESPONSIBLE DEFENDANT OR DEFENDANTS, OR THAT WERE WASTED AS A RESULT OF THAT CONDUCT. COMPENSATORY DAMAGES ALSO EMBRACE MORE THAN RECOMPENSE FOR MONETARY DAMAGES, HOWEVER, AND MAY INCLUDE FAIR AND REASONABLE AMOUNTS FOR PROVEN PHYSICAL PAIN, MENTAL SUFFERING, AND HUMILIATION, IF ANY, THAT REFLECT THE DURATION AND INTENSITY OF THE INJURY. AND EVEN IF A CONSTITUTIONAL VIOLATION INFLICTS ONLY INTANGIBLE INJURY, COMPENSATION IS STILL APPROPRIATE. INSOFAR AS IT SEEKS TO COMPENSATE INTANGIBLE LOSSES OF FIRST AMENDMENT RIGHTS, YOUR AWARD MUST BE PROPORTIONED TO THE LOSS ACTUALLY SUFFERED BY A PLAINTIFF, AND SHOULD REFLECT THE DEGREE TO WHICH A DEFENDANT'S CONDUCT ACTUALLY THWARTED THE PLAINTIFF'S EXERCISE OF FIRST AMENDMENT RIGHTS. THE HARM SUSTAINED BY A PLAINTIFF TO HIS FIRST AMENDMENT RIGHTS MAY BE ESTABLISHED THROUGH DIRECT TESTIMONY OF THE PLAINTIFFS, OR MAY BE INFERRED FROM THE CIRCUMSTANCES THAT THE EVIDENCE HAS SHOWN EXISTED. AND, OF COURSE, YOU MAY NOT AWARD COMPENSATORY DAMAGES AGAINST A PARTICULAR DEFENDANT UNLESS IT IS ESTABLISHED, IN THE MANNER I HAVE ALREADY DESCRIBED TO YOU, THAT THAT DEFENDNT WAS RESPONSIBLE FOR THE INJURY FOR WHICH YOU WOULD AWARD DAMAGES, OR BELONGED TO A CONSPIRACY WHICH WAS RESPONSIBLE FOR THAT INJURY.

48 In addition to actual damages, the law permits the jury, under certain circumstances, to award the injured person punitive and exemplary damages, in order to punish ~~the wrongdoer~~ for some extraordinary misconduct, and to serve as an example or warning to others not to engage in such conduct.

If the jury should find from a preponderance of the evidence in the case that ~~the~~ plaintiff is entitled to a ver-

dict for actual or compensatory damages; and should further find that the act ~~or omission~~ of the defendant, which proximately caused actual injury or damage to the plaintiff, was maliciously, or wantonly, or oppressively done; then the jury may, if in the exercise of discretion they unanimously choose so to do, add to the award of actual damages such amount as the jury shall unanimously agree to be proper, as punitive and exemplary damages.

An act ~~or a failure to act~~ is "maliciously" done, if prompted or accompanied by ill will, or spite, or grudge, either toward the injured person individually, or toward all persons in one or more groups or categories of which the injured person is a member.

An act ~~or a failure to act~~ is "wantonly" done, if done in reckless or callous disregard of, or indifference to, the rights of one or more persons, including the injured person.

An act ~~or a failure to act~~ is "oppressively" done, if done in a way or manner which injures, or damages, or otherwise violates the rights of another person with unnecessary harshness or severity, as by misuse or abuse of authority or power, or by taking advantage of some weakness, or disability, or misfortune of another person.

Whether or not to make any award of punitive and exemplary damages, in addition to actual damages, is a matter exclusively within the province of the jury, if the jury should unanimously find, from a preponderance of the evidence in the case, that the defendant's act or omission, which proximately caused actual damage to the plaintiff, was maliciously or wantonly or opppressively done; but the jury should always bear in mind that such extraordinary damages may be allowed only if the jury should first unanimously award the plaintiff a verdict for actual or compensatory damages; and the jury should also bear in mind, not only the conditions under which, and the purposes for which, the law permits an award of punitive and exemplary damages to be made, but also the requirement of the law that the amount of such extraordinary damages, when awarded, must be fixed with calm discretion and sound reason, and must never be either awarded, or fixed in amount, because of any sympathy, or bias, or prejudice with respect to any party to the case.

If you find that the plaintiff is entitled to a verdict in accordance with these instructions, but do not find that the plaintiff has sustained substantial ~~(compensatory)~~ damages, then you may return a verdict for the plaintiff in some nominal sum such as one dollar ~~on account of actual damages~~.

~~(~~The award of a nominal sum on account of actual damages would not preclude your awarding punitive damages in such amount as you deem appropriate, if you find that the award of punitive damages is justified under these instructions.~~)~~

UNITED STATES DISTRICT COURT
CIVIL DIVISION

JULIUS HOBSON, et al.,	:	
Plaintiffs	:	
v.	:	Civil Action No: 76-1326
JERRY WILSON, et al.	:	
Defendants	:	

MEMORANDUM OF DISTRICT OF COLUMBIA DEFENDANTS IN SUPPORT OF THEIR DEFENSE OF GOOD FAITH IMMUNITY

Plaintiffs have claimed as a basis for this lawsuit against the District of Columbia defendants that officials, agents, and informants of the District of Columbia conducted electronic surveillance which were targeted toward the individual plaintiffs and organizations in which they played an active role. Plaintiffs further claim that this electronic surveillance was conducted without prior judicial review and authorization and, therefore, is unlawful.

The individual District of Columbia defendants have responded to these claims by asserting that their actions during this period of time were immune from liability based on the qualified immunity defense.[1] See Procunier v. Navarette, 434 U.S. 555, 98 S. Ct. 855, 55 L. ed. 24 (1978).

STATEMENT OF FACTS

Plaintiffs have called several District of Columbia defendants , as well as Metropolitan Police Department employees who were working in the Intelligence Division during the relevant periods of time to testify during their case-in-chief as to the use of electronic surveillance during the years of 1968-1971. It was uniformly established by their testimony that the electronic surveillance conducted by the Intelligence Division between 1968-1971 was based on the prior consent of one of the parties to the interupt.

---

[1]The individual District of Columbia defendants presently claiming this immunity are: Jerry V. Wilson, Thomas J. Herlihy, Jack Acree, Christopher J. Scrapper, Edward J. Jagen, George R. Suter, Harold Bynum, John W. Mahoney and Ann Kolego Markovich.

The testimony of George Suter,a former lieutenant in the Intelligence Division revealed that of the three electornic surveillances which he had personal knowledge,all were based on the consent of one party to the interupt. Mr. Suter further testified that in all three instances, the consenting party had been a paid informant of the Metropolitan Police Department, and that the premises containing the electronic surveillance equipment had been rented by the Metropolitan Police Department.

With respect to the legality of his actions, Mr. Suter testified that "it was his personal understanding and belief that it was sufficient for the occupant of the (premises) to consent to a surveillance of the (premises)". Mr. Suter went on to state that "it was his personal understanding and belief that it did not matter if the occupant of the premises was present during the surveillance". These representations were also adopted by Mr. Suter in his supervisory capacity as a high-ranking official in the Intelligence Division.

Jack Acree testified that as a sergeant in the Intelligence Division, he was aware of at least three or four electronic surveillances conducted by the Metropolitan Police Department. The premises monitored according to Mr. Acree,'were always resided in by an informant of the Metropolitan Police Department,after receiving consent from the informant'.Mr. Acree testified that "it was not his understanding that the presence of an informant was necessary in order to monitor electronic surveillance which had been installed with the informant's consent". He further stated that he thought all these actions were legal because "he had discussed the surveillances with an Assistant United States Attorney".

Thomas Herlihy, as the highest ranking official in the Intelligence Division also testified that all electronic surveillance conducted by the Intelligence Division between 1968-1971 was based on the consent of one party to the interupt.

Chief Melvin Winkleman, than a Captain in the Internal Affairs Division testified concerning the investigation that he conducted on the activities of the Intelligence Division in 1975. Although he testified, that there appeared to be no established procedure for monitoring an informant's

presence, even when the informant was not there, he stated his findings revealed that all the electronic surveillance utilized by the Intelligence Division were based on the consent of one party.

LEGAL JUSTIFICATION FOR ACTIONS OF DISTRICT OF COLUMBIA DEFENDANTS

The electronic surveillance operations complained of donot give rise to a 42 U.S.C. 2520 or D.C. Code §23-554 cause of action. Under 18 U.S.C. 2511 (2)(c) it is not unlawful for persons acting under color of law to intercept wire or oral communications where one of the parties to the communication has given prior consent. See also U.S. v. Bryant, 142 U.S. App. D.C. 132, 438 F. 2d 642; Lopez v. U.S., 373 U.S. 427, 83 S. Ct. 1381 10 L. Ed. 2d 462 (1963); U.S. v. White, 401 U.S. 745, 91 S. Ct. 1122, 28 L. Ed. 2d 453 (1971). Where the person consenting or a party to the conversation is an informant and the government provides the equipment and does the monitoring, the informant is acting under color of law within the meaning of 18 U.S.C. §2511 (2)(c). See U.S. v. Bryant; U.S. v. Craig, 573 F. 2d 855 (Ill. 1977). Accordingly, the electronic surveillance of certain of the plaintiffs where one of the parties was a consenting informant does not give rise to a claim under 42 U.S.C. §2520. Prior authorization to conduct electronic surveillance constitutes a complete defense. See 42 U.S.C. §2520 and D.C. Code §23-554.

The law in this jurisdiction, or any other, remains unaltered with respect to the lagality of an intercept based on the consent of one party. In addition, there is no authority to refute the defense of the District of Columbia defendants that the continuous monitoring of a consentual intercept is lawful under 42 U.S.C. §2520 and D.C. Code §23-554.

DISCUSSION OF GOOD FAITH IMMUNITY IN DEFENSE OF ACTIONS INVOLVING CONSTITURIONAL TORTS

In the case of Sheuer v. Rhodes, 416 U.S. 232 (1974) the Supreme Court defined the burden of proving qualified immunity as follows: "It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief, that affords a bases for qualified immunity of executive officers for

acts performed in the course of official conduct". In Wood v. Strickland, 420 U.S. 308, 321 (1975), the court noted that the standard for qualified immunity contained both subjective and objective elements: "The official himself must be acting sincerely and with a belief that he is doing right (subjective), but an act violating...constitutional rights can be no more justified by ignorance or disregard of settled, indisputable law... than by the presence of actual malice (objective). Additionally, in Procunier, et al., v. Navarette, 434 U.S. 555, 562, 55 L. Ed. 2d 24, 98 S.Ct. 855 (1978) the Supreme Court held in relevant part that, "officials were entitled to qualified...immunity...if: the constitutional rights allegedly infringed by them were clearly established at the time of their challenged conduct, they knew or should have known of the rights, and they knew or should have known that their conduct violated the constitutional norms".

CONCLUSION

Based on the standard established in Procunier, the evidence is clear that the individual District of Columbia defendants acted in good faith and have established their good faith immunity defense as a matter of law.

Judith W. Rogers /LwB
JUDITH W. ROGERS
Corporation Counsel, D.C.

John H. Suda /LwB
JOHN H. SUDA
Deputy Corporation Counsel, D.C.

Laura W. Bonn
LAURA W. BONN (951327)
Assistant Corporation Counsel
Attorneys for District of Columbia Defendants
District Building
Washington, D.C. 20004
727-6348

George N. Barclay, LwB
GEORGE N. BARCLAY (248849)
Assistant Corporation Counsel, D.C.
Attorneys for District of Columbia Defendants

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum of District of Columbia Defendants was hand delivered to Daniel Schember, Esq., 1712 N Street, N.W. Washington, D.C., and David White, Attorney for the Department of Justice, Washington, D.C., 20530, this 14th day of December, 1981

Laura W Bozon

Assistant Corporation Counsel, D.C.
Attorneys for District of Columbia
District Building
Washington, D.C. 20004